Supreme Court, U.S.
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No. 10-706

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In The

Supreme Court of the United States

Roger Marx Desenberg
Petitioner,

v.

Google, Inc.
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Courts erred in dismissing the case by interpreting the BMC precedent to mean all patented inventions used by multiple parties are invalid per se, and even in cases when all of the steps of a pioneer web site patent is performed by a single web site.

2. Whether the Courts misinterpreted the web site patent as not having direction and control over its users, when Courts in the USA and other countries have found Google guilty for vicarious liability for the actions of its users.

3. Whether the Court erred in interpreting "user" must refer to a real person, since "user" in computers often refers to a program, and not a person, nor a representative.

4. Did the Court err by allowing Defendant, during litigation, to change status quo to hide infringement by changing the very patented technology under dispute; and has only changed over ten years as a response to the this case; without a Markman nor other hearing to check if AdWords is equivalent to the patented technology?

5. Whether the Courts erred in not recognizing Defendant and Courts failed to state a specific claim as to which step of the patent, in its entirety, violates a precedent from a case; and then dismiss based on a general non-specific claim without comparing Defendant's methods to the patent and without discovery.

6. Did the Court err in not granting a preliminary injunction as: (i) the traditional four factor test supports such action; (ii) Defendant has no patent; (iii) there is no prior art; (iv) Defendant's "Quality Score" bid rigging function would be removed benefiting the pubic interest; and (v) Defendant would not suffer significant hardship nor revenue loss; and (vi) the principals of equity have been ignored by the Courts.

7. Who has rights to write standard architectures for the industry: (i) the CEO from the infringing startup company, who introduced bid rigging, educated the public to think bid rigging is unavoidable and acceptable, and instituted a version of the patented method enabling over $3 billion of fraud per year; or

(ii) the Inventor and CEO of the startup company who endured for seven years to earn the patent rights from the USPTO in order to prevent excessive fraud for the public interest?

PARTIES TO THE PROCEEDINGS

Petitioner and appellant is Roger Marx Desenberg, the past CEO of an Internet startup that first used the domain name "ProjectWork.com".

Respondent and appellee is Google, Inc. who was an Internet startup at the same time as appellant.

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PETITION FOR CERTIORARI

Petitioner Roger Marx Desenberg, respectfully seek a writ of certiorari to the United States Court of Appeals for the Federal Circuit.

OPINIONS BELOW

Opinion of the Federal Circuit was entered on August 31, 2010, No. 2010-1212, Fed. Cir. Jan-2010, P.13. The district court's order affirming the dismissal for failure to state a claim for either direct or indirect patent infringement was entered on January 11, 2010, (1:08-10121) SDNY.

JURISDICTION

The court of appeals entered its judgement in this on August 30, 2010 and denied the Plaintiff's request to reverse the dismissal. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

1) Section 8, Article 1 is being violated: "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

2) The '732 Patent issued by the U.S. Patent and Trademark Office confer upon the patent holder "the right to exclude others from making, using or selling the invention throughout the United States" and its territories and possessions.

3) U.S. Const. Amend. V, "No person shall" ... "be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

STATEMENT OF THE CASE

This case presents several important questions of federal patent law with significant implications for the Nation's economy.

"QUALITY SCORE" FUNCTION OF GOOGLE'S ADWORDS IS A BID RIGGING SYSTEM THAT VIOLATES THE SHERMAN ACT

The "Quality Score" function implemented by the Defendant can only be reasonably interpreted as being a bid rigging mechanism.

Suppose in an apple store the same kind of apple was priced differently for each different group of people. Wealthy people or popular people "chosen" by the store are given a low price to buy one single apple, but some new person off the street must pay double the price for the same apple, even though quantity discounts were irrelevant because each apple was sold individually. It would be the same as if a stock exchange had a different market price for a stock for different groups of people, based on whatever the stock exchange wanted. So if the real market price of a stock was $5, and a new user came onto the exchange, and gave this person a price of $9, for whatever reason, instead of $5, this would violate the fair competition laws of the United States.

One of the ways Google implements bid rigging is through their "quality score" mechanism. Leads are generally much more valuable than apples or stock. A stock may increase $1 or may double or triple in value. A good lead will typically bring in revenue in an amount of ten (10) times the price paid for the lead, or more. So if lead costs $10, and business is transacted, revenue will often be at least $100 or more. So leads are very valuable, especially if they are highly targeted.

Companies and individuals are limited by resources in the number of leads it can handle by responding effectively.

An individual may only be able to handle and respond to five proposals a day. Suppose a large company can handle 100 proposals a day. Suppose a large company, ("LargeCo") is willing to pay $10 per lead, and an individual ("Indo"), who is in the same business, is also willing to pay $10 per lead. According to Google's architecture, the company and individual will each have a "Quality Score" based on something. What the quality score is based on is not significant. In all cases the result is always bid rigging.

Suppose the QS for LargeCo is "80", and the QS of Indo is "44". (See Appendix for complete bid rigging explanation.) "Ad Rank" will be 80/10 or 8, and 44/11 or 4. AdRank decides who gets the leads. On this round five leads are being provided, and the organization with the 6th highest "Ad Rank" will not be given the lead. Using the scenario across several vendors the "Ad Rank" may look like this:

	Max price	Quality Score	Ad Rank
Company 1	10	80	8
Company 2	10	70	7
Company 3	10	60	6
Company 4	10	50	5
Company 5	10	50	5

Company 6	11	44	4

In this scenario, even though Company 6 is willing to pay the most for a lead, $11, Company 6 is being denied

the opportunity to purchase the lead at the same price as the others. Company 6 may have to pay $20 for the same commodity where Company 1 would be paying only $10 or $8. Since each lead is priced and sold individually there are no quantity discounts. Through Google's analytical software, they know which leads are most valuable and most likely to generate commercial transactions, and they use the Quality Score so the best leads are pushed to their favorite organizations. Claiming the Quality Score is increasing the likelihood of a "good transaction" is tantamount to saying, "Our preferred partner is a big company and can handle all the business we attract. So we give them all the leads."

Considering Internet lead generation is now becoming vital to the survival of many businesses, big and small, Google is in essence illegally, and unfairly controlling which organizations are obtaining the best leads, while over charging organizations Google does not like.

Google claims the Quality Score is based on "the likelihood that someone will click on an ad". This is interesting but irrelevant. Whatever the basis of the Quality Score calculation, it always results in bid rigging. Google may suggest that since their objective is to maximize their revenue, they should be allowed to decide which organizations get the best leads, if that decision process maximizes their revenue. But maximizing revenue is not a valid or legal permission to violate the Sherman Act and provide an unfair pricing mechanism and unfair marketplace.

There are many ways Google can incorrectly implement the maximum price system which causes market confusion and fraud. Google, through its Quality Score function, successfully excludes some groups from participating fairly

in Internet maximum price lead marketplaces.

Does Google still infringe on the '732 patent when they implement the Quality Score? Yes. Because each lead has a maximum price, and the price paid for each lead is in between 0 and its maximum price, as in claim 1 of the '732 patent. The bid rigging AdRank function does not change the method to avoid being within the bounds of claim 1 of the 732 patent. Mathematically the sorting is ultimately dependent on the maximum price, unless bid rigging is used.

The Plaintiff has the patent rights to remove the Quality Score from the marketplace to reduce excessive fraud. Thus we argue that these Quality Score facts supports the Plaintiff's position that a preliminary injunction provides needed and vital public interest benefits and should be so ordered as soon as the Court spends an hour of time ascertaining infringement.

WEB SITES DIRECT AND CONTROL

The essence of the Internet is allowing billions of people to be completely directed and controlled in certain activities, where a strict set of rules are followed. For example, typically all web sites that accept contact information, generally have a field called "Phone Number"; and the data entered is typically validated by the web site to ensure a phone number is entered. Letters are not accepted, and the number of digits is sometimes counted, with a minimum number of digits needed. The web site completely controls and directs what the user can do. The user can ONLY enter numerical data. The user cannot enter audio data, or video data, or an email, or a search. Only a set of numbers

can be entered. And some web sites even test the phone number automatically by a computer phone call to verify the number is in control of the user. The point is, the nature of the Internet is in the directing and controlling of users via validating data. Invalid data doesn't work, and with simple field validation inventors build web sites to direct and control huge populations in minutes.

Users are so controlled that some web sites direct them to hit certain keys and what time of day the keys must be hit, and in what combination. That's a lot of control. The following web sites all direct and control their users:

amazon.com, priceline.com, ebay.com, projectwork.com, google.com/adwords.

Today, web sites direct and control how people collect unemployment, obtain jobs, rent housing, purchase tickets, file taxes, etc. Since in each step of the '732 patent a web server is the primary thing that is performing the method, it is clearly a web site invention. And web site inventions inherently direct and control users. The BMC invalid invention is not a web site invention, and is not a stand alone web site invention, and therefore though the BMC precedent is considered good law, the facts herein distinguish with the '732 case, and the BMC precedent was distinguished in seven other cases.

Many patents, such as Priceline's patent 5,794,207, were found to be valid and were multi-party in the same way as the 732 patent: all the claimed steps are performed by a web server, and other users which could be actors that use the web server are described in the claims in "wherein" and "from" clauses to describe data. Hence in these other cases, the good law of BMC did not apply.

The final test to determine if web sites direct and control to meet the standards is vicarious liability tests. Software programmers and software companies, and Internet companies have always been vicarious libel for enabling users to violate laws. Google is vicarious libel for the behavior of its users, and many civil suits have been filed against Google for their vicarious liability and many Courts around the world have found Google vicarious libel for the actions of its users. If users use the system in a such a way as to violate copyright law, or other laws, Google is libel.

Thus the '732 patented technology, like all web sites, directs and controls. Thus, patents that protect web site inventions, such as the '732 patent, where all the claimed steps are performed by a web site, are valid patents according to the BMC standard and according to the direction and control standards, and especially so regarding vicarious liability.

STEP BY STEP, WHAT IS PERFORMING THE STEPS?

The quotations are from the claim 1 of the '732 patent, and the entire claim 1 is presented here showing all steps are performed by a machine, the machine usually being a web server, though the machine type performing the method is not specified, so there is no bounds as to the type of machine.

Function 1:
1. "A method for a user using a communication network to search for and identify at least one matching provider of project work, the method comprising";
THIS IS THE OVERALL FUNCTION OR GOAL OF THE INVENTION. THERE IS NO STEP DEFINED IN THIS PREAMBLE.

STEP1:
transmission of a lead comprising contact information that enables communication between the user and the provider,
WHAT IS **TRANSMITTING**? ANSWER: THE WEB SITE.

DEFINITION 1-A:
wherein the transaction lead price is the amount of money paid for the lead, and further
THIS IS A DEFINITION, NO PERFORMANCE OF ANYTHING

RESULT1:
wherein a service is performed by the user or the provider as a result of the tranmission of the lead and
THIS IS A RESULT, NOT A STEP. Adding a commercial

transaction as a result makes the patent stronger, not weaker, according to patent examiner bashore.

RESULT2:

wherein the performance of the service includes a service transaction fee paid by the user or the provider;
THIS IS A DEFINITION, NOT A STEP. THE SERVICE INCLUDES A FEE.

STEP2:

storing in a database at least first provider information and second provider information,
WHAT IS **STORING**? THE WEB SITE IS STORING.

DEFINITION 2-A:

"the at least first provider information and the at least second provider representing at least respective maximum lead prices,

each of the respective maximum lead prices representing the maximum amount that each of at least a first provider and a second provider is willing to pay for an lead,

wherein each of the at least first and second providers provide at least one service with which the lead is associated; "
THESE ARE DEFINITIONS. NO STEPS PERFORMED.

STEP 3:

"**comparing** the respective maximum lead prices to determine a lowest respective maximum lead price; "
WHAT IS **COMPARING**? ANSWER: THE WEB SITE

STEP 4:

"**identifying** the provider associated with the lowest one of the respective maximum lead prices; "

WHAT IS **IDENTIFYING**? ANSWER: THE WEB SITE

STEP 5:

"**receiving** at least one lead limit that represents a maximum quantity of leads to be provided; "

WHAT IS **RECEIVING**? ANSWER: THE WEB SITE

STEP 6:

"**receiving** from a user or provider a request for contact information, the contact information enabling communication between the user and at least one of the first provider and the second provider; "

WHAT IS **RECEIVING**? ANSWER: THE WEB SITE

STEP 7:

"**selecting** at least one provider based on each respective provider's maximum lead price and the lead limit; "

WHAT IS **SELECTING**? ANSWER: THE WEB SITE

STEP 8:

"**calculating** a respective transaction lead price for each of the at least one selected provider, wherein the respective transaction lead price equals at most each respective selected provider's maximum lead price; and "

WHAT IS **CALCULATING**? ANSWER: THE WEB SITE

STEP 9:

"**providing** the at least one lead to the user or provider for project work."

WHAT IS **PROVIDING**? ANSWER: THE WEB SITE

The web server does all the steps, and the results of providing leads are service transactions. All perfectly drafted.

For a judge or Court to argue that Google or a web site does not have direction and control of its users, and not have vicarious liability, the Judge and Court must ignore a large body of recent intellectual property precedents and patent laws including those listed in the Table of Authorities. Pro Se Plaintiff only recently has been able to access to LexisNexis and other legal research tools that are available to attorneys. Pro Se Plaintiff just recently learned the meaning of the terms "vicarious liability" and "principals of equity". Why must Pro Se Plaintiff be required to present legal information to the Courts that they already know in order to secure his patent rights?

To avoid the truth through an attitude of "no one is as blind as those who don't want to see" is very disheartening for a USA citizen to experience from his own country.

In Gd I trust that justice will be swift and equitable.

MULTI-PARTY ISSUES, IRREPARABLE HARM, AND PRINCIPALS OF EQUITY

BACKGROUND

Plaintiffs invention has been operational and ready for business since July 21, 1999.

The system Plaintiff invented is a "global" system, that requires thresholds of populations needed to run. It cannot serve one client. It doesn't work then. It only begins to work its magic when there are thousands of clients, and the more the people use it, the more amazing it is. This is the nature of the Internet, and the nature of Plaintiff's invention.

Considering that in 1999 Plaintiff created an invention, the entire set of work includes several types of intellectual property including: patent rights, trademarks, copyrights on software, books, and videos.

The patented method is normally 100% performed by a set of web servers, though the software could run on another type of hardware other than web servers. The usual architecture is one web server, that serves up web pages, and a database server that stores and reports the data. Together, they produce the method. A larger system will add more servers. The patent is not limited to being a web server. But it is written so whatever "it" is doing the method, if the hardware/software combination does all the steps, and the result is a service transaction, the party responsible for the operation and ownership of the system that produces the method, infringes.

Internet inventions are machines, a combination of hardware and software. Alone, neither the hardware nor the software will do anything. But run software on some hardware and the single most fantastic innovation is created, the Internet. A properly written Internet method patent will describe what the functions or steps the software-hardware combination performs.

PUBLIC INTEREST PIONEER PATENT VS PATENT TROLL ATTEMPT AT SUBVERTING PATENT SYSTEM

Internet patented inventions may have various characteristics and be of various types, such as:

(i) stand alone inventions where the test is if a computer kiosk was placed in a public place, and only performed the inventive claimed method of the patent, would

a commercial financial transaction result? If the answer is yes, then the patent may be one of the few Internet pioneer patents that have been invented. The '732 patent is one of these pioneer patents.

(ii) Another type of computer patented invention can be thought of as a component, such as an inventive searching method or organizing method. The i4i case (6:07-cv-00113-LED) concerns a component invention. By itself this patent does nothing. It is a way of organizing data. But used with a word processer, like Microsoft's Word for example, the method can be used to make the time to store and retrieve data a little faster. And this small increase in efficiency may have significant results for some people using the invention. Generally, commercial financial transactions are not a direct result of the practicing of a method component such as the i4i patented technology. i4i did obtain order for an injunction against Microsoft.

The very best and most important Internet inventions are stand alone inventions that create commercial financial transactions like the '732 pioneer patent.

COURTS DETERMINED MULTI-PARTY INTERNET PATENTS ARE VALID CONTRARY TO THE FEDERAL CIRCUIT'S DECISION

The Internet is clearly a multiple party invention, and in fact is only useful because multiple parties use it. Internet inventions are clearly patentable, and this is law. Internet inventions are described in patent claims with references to users and types of data and processing, and where the data originated.

Most Internet inventions are web sites that perform a function consisting of several steps or sub-functions, where such function has a result. If one person uses the patented invention, nothing happens. If hundred people use the invention, maybe one commercial transaction will happen. If ten thousand people are directed and controlled by the web site invention, a few thousand dollars of transactions may happen. When millions of people use, and are directed and controlled by the invention, billions of dollars of transactions will happen. That's the big kick for a software professional, having masses of people use their code, and have the world know who wrote the code.

After all, the great struggle in every patent litigation is balancing the fact that discovery is by far the most expensive part of the process with the fact that the vast majority of cases settle during the course of discovery, as a result of facts revealed through discovery. But in this case, no discovery and no extrinsic evidence was allowed.

PATENT VALIDITY BASED ON NOT DISTINGUISHING DIFFERENT TYPES OF MULTI-PARTY CHARACTERISTICS

There exist several different types of "multi-party" characteristics. For example:

(i) Multiple party patents used by multiple people; All patents are multiple party patents because all patented inventions are made to be used by multiple parties.

(ii) Method patents where one machine performs all the claimed steps of the claimed method, where multiple parties are mentioned in the claims;

(iii) Invalid method patents were multiple parties

performs different steps of the claimed method using different disconnected machines.

Further, neither the Defendant, nor the District Court made any distinction between different multi-party characteristics but instead called the '732 patent a "multiple party patent", and claimed any patent that mentions multiple parties is a multiple party patent, and therefore invalid. There is no distinction of method patents that are (i) used by multiple parties, vs. (ii) patents that mention multiple parties in the claims but still have one machine performing all the claimed steps of the method, vs. (iii) invalid patents that mention multiple parties, and have multiple parties performing multiple steps using multiple disconnected machines without vicarious liability nor direction and control over its users.

The method describes a set of web site pages that performs functions, and the method is written perfectly, with one party infringing, the one owning and controlling the web site which performs all nine steps of the claimed method.

Clearly, there are many "multiple party" patents that have been considered valid by the Courts, such as the PriceLine.com Patent No. 5,794,207 whose first lines are:

> "1. A method for using a computer to facilitate a transaction between a buyer and at least one of sellers, comprising:
> inputting into the computer a conditional purchase offer which includes an offer price;..."

Clearly Courts have found patents to be valid where multiple parties are mentioned, yet all steps are performed

by the web site, which is the format of the '732 patent.

FAILED TO STATE A CLAIM OF SPECIFYING AT LEAST ONE STEP THAT IS NOT PERFORMED BY THE WEB SITE

Neither Defendant nor the Courts have identified at least one of the nine specified steps as being performed by another party. Which step in claim 1 of the '732 patent is not performed by the web site? This question was never answered by the Courts, nor the Defendant. "User and provider steps" were mentioned, and there are no user and provider steps, and results were claimed to be steps.

There is considerable ambiguity about the definition of a "step". In the other patent claims the word "step" was used. In Patent 732 the word "step" is not used and the word "result" is used. Valid interpretations of how many steps are in claim 1 of the '732 patent include:

(i) one step of transmitting leads comprised of 9 substeps with 2 results or

(ii) one function of transmitting leads comprised of 9 steps with 2 results.

Only one party, the owner or controller of web servers, infringe as the web site performs the step of transmitting leads. Are all 9 "steps" or "subfunctions" or "substeps" being performed by the Google's AdSense and AdWords servers? YES.

ABSURD TO BE FORCED TO SHOW THAT RESULTS ARE NOT STEPS TO BE PERFORMED BY THE INVENTION ACCORDING TO PATENT LAW

The Defendant, and the Courts, suggests that a result is a step that is to be performed by the infringing party. A result is not a step, but a "result" is what happens after the steps of the invention are performed by the web server.

The Defense argues that the '732 patent phrase, "wherein a service is performed by the user or the provider as a result of the transmission of the lead and wherein the performance of the service includes a service transaction fee paid by the user or the provider" means that Google must act as a "user" or "provider" to infringe. This is absurd. Only a bias or other incentive could influence the Courts to accept this absurdity. Google does not have to perform any service transaction to infringe, and does not have to be the user or provider. A result of their infringing web site, is service transactions are performed, and is in fact why Google's customers pay them: they pay Google for having service transactions result. The BMC precedent does not set a precedent for the absurd such as:

(i) every subject of every sentence in a patent claim must refer to the party infringing; and

(ii) results, if mentioned in claims, must also be performed by the party infringing. The District Court may have been influenced by other factors such as bias to make such blatant absurd statements.

As opposed to black law, this kind of reasoning is a black hole of absurdity, with no light, and no knowledge escaping, just a blind eye that does not want to see.

The "performance" of the invention results in the

"performance of a service transaction". The Courts use of "no one is as blind as those who don't want to see" attitude is shocking to a citizen not accustomed to working in the legal world.

DEFENDANT'S MACHINE REPRESENTS PLAINTIFF'S WORK, AND PERFORMS ALL THE STEPS OF THE METHOD, NO PARTY NOR ACTOR PERFORMS ANY CLAIMED STEPS

In the case of claim 1 of the 732 patent, there is no "party" or "actor" that performs the claimed steps. The Court is treating a web site or a web server as an "actor" when in fact, what is performing the steps of the claimed method, is a machine. The infringing party does not actually perform any steps of the method, the infringing party owns or controls the machine that performs the steps of the method. To claim that the machine is a "representative" of the infringing party is not accurate. "Representative" is defined as "someone who is authorized to act in place of and on behalf of someone else, by that other person for some special purpose."

Google is not authorized to use the method that runs AdWords. And Google has many patents. But they didn't invent this. Google's infringing web site represents how the Plaintiff has used a computer to produce a system that generates leads and Google copied the web site. Google does not infringe by the action of any actor actually performing any of the steps, like sorting maximum prices. Google infringes because they copied the Plaintiff's software, installed that software on their web site, and their web site performs those steps. The actual acts of infringement that

Google performs is the writing of the software, which resides on a communication network, that performs the steps of the claimed method, and putting the machine, a software and hardware combination, on the Internet, wherein the machine performs the claimed steps. Thus, Google's AdWords web site is "representative" of the Plaintiff's work, not the Defendant's. Thus the Defense and the Court's counting as a party, Google themselves, is inaccurate. Google does not perform any steps themselves, their machine does the steps and Google owns the machine, which is representative of the Plaintiff's work.

Google's infringement act is collecting the lead revenue from the Plaintiff's patented method, and ignoring the Plaintiff's patent rights. In this sense Google's web site is really more representative of the Plaintiff, not the Defendant. The Defendant infringes and violates law by owning and controlling a machine that performs the steps of the patented claimed method.

Google's Web Servers, like the Plaintiff's Web servers, distribute leads, and both do so by performing the nine steps. That is the entire act of direct infringement: having a set of web servers perform the nine steps. Google's Web server performs each and so does commit direct infringement.

A "user" or "provider" in the context of the claims is more reasonably interpreted as referring to user data, and provider data rather than a "person". A "user" as used in claim 1 of the 732 patent, may be a software program that is a user, or a location in computer memory, and is not necessarily an "actor" inputting data. The data could be calculated from statistics, without any input from the user or provider. The user and provider limitations clearly are not individual claimed steps of the invention. The method

claims receiving information from a user. It does not claim the step on the inputting of information by the user. If it did, it would be written as:

The method comprising;

receiving of information from a user or provider;

inputting information by a user or provider.

In that case, the method would have the two steps, receiving and inputting. What a user or provider does is outside the scope of the claims. This is analogous to saying an invention for a radio receiver must include the invention of a radio transmitter. It is an absurd argument. This is the kind of word games and trickery the Defendant is engaging in, and its all absurd and illogical.

"Applying this precedent, the district court held that a claim for direct infringement "would require Desenberg to allege that Google performs both the 'user' and 'provider' steps in the claim, which Desenberg has not alleged, and by

the very terms of his patent, cannot realistically allege." This is absurd. Applying this precedent would not require Google to perform the user and provider steps in the claim, because there are not any user or provider steps in the claim. There are only web server steps and results.

Neither the Defendant nor the District Court, nor the Federal Circuit identified a complete claimed step where another party is performing the step other than the web server(s). The Plaintiff's patent is being denied the right to discovery for an illogical and unlawful set of arguments by the Defendant, and by the Courts.

There is no law that invalidates multiple party patents. The BMC precedent does not suggest a result of the steps of an invention is limited to any number of parties.

PATENT RIGHT SETTLEMENT VS COPYRIGHT SETTLEMENT

No amount of money in the world could ever pay for denying the Plaintiff's right to run his business for the remainder of the 10 years of the patent. The Plaintiff did not sweat and invest years of time and money into the '732 patent to obtain a copyright settlement. The Plaintiff came to obtain a patent settlement in the way patents were originally meant to work. Plaintiff is not interested in trying to be a patent troll, and in fact Plaintiff loathes patent trolls as they make the real inventors look bad. Plaintiff respectfully demands his fair share of the revenue, and the ability to write the industry standards. According to the Plaintiff and the "The Economist", a new architecture where there is one entity overseeing the code and the architecture, to remove the excessive fraud is needed and the time is now.

This can be achieved in a well crafted preliminary injunction that leaves the Defendant's revenue not significantly changed. Considering the Defendant earns $14 billion annually, earning only $12.5 billion is not a significant difference. It's still a lot of money for infringing someone else's intellectual property during the course of litigation.

BIAS EXPECTED AND PROBABLY UNAVOIDABLE

Plaintiff maintains it is not unexpected the District Court supported dismissal because it is easy to be biased because so many years have passed and so much money is involved, and it is a story that is hard to believe, that AdWords and AdSense was invented and patented by another dot com start up, and that their strategy was to remain quiet until

the patent issued, and then to file suit, which amounts to ten years time now. Admittedly it sounds like a crazy story. But on the face of the complaint, and according to the defendant's responses, there is little doubt the story is in fact true. The Defendant has no patent, and there is no question that the Plaintiff invented and built in 1999 said unique invention, before any one else in our world of any country, on any continent, and the Defendant has not been able re-engineer around the patent claims nor avoid infringement. In the i4i case (6:07-cv-00113-LED), which has a patent date of 1998, an injunction was ordered against Microsoft ten years later, in 2009. Patent litigation, because of large corporations control of Federal Civil Procedures, requires a long time to litigate. For the '732 patent, over 50% of patent protection has already elapsed. Out of 20 years, only 9 years remain. The Defendant has successfully infringed for over 10 years.

STATUS QUO ABLE TO BE CHANGED BY DEFENDANT AND PRELIMINARY INJUNCTION IS APPROPRIATE

Preliminary injunction is appropriate and supported by:

(i) Defendant has no patent;

(ii) Defendant has not presented any prior art;

(iv) Both methods are maximum price based lead price mechanism;

(v) All four factors for a preliminary injunction are met;

(vi) no significant harm to Defendant;

(vii) bid rigging scheme can be stopped;

(vii) excessive fraud can be reduced.

Judges denied keeping status quo unchanged for the trial

giving Google time and opportunity to hide infringement, temporarily during discovery. Thus considering all the circumstances, the Plaintiff realized that the proceedings was not a fair and just proceedings according to both law and equity.

The Courts responded with an ultimatum: hire an attorney or have the case dismissed.

There is a difference in a newly hired patent examiner and a wise examiner who has been doing patent work for decades like Examiner Bashore and he required a result be added to the claims "to give the patent teeth". Patent Examiner Bashore explained to the Plaintiff why the patent was better written to include a commercial financial transaction as a result. The Courts erred in applying law and interpreting law and interpreting patent claims.

THE MYTH: THE WORLD NEEDS GOOGLE

Because of the nature of the Internet a small inventor can provide the same services to a billion users in the same way as a huge computer company, without hiring any additional employees. Since software can be copied so easily, and servers can be added easily to handle volumes of users, Plaintiff can provide enough computer power to handle the processing and delivering of millions of leads per day by ordering extra web servers from a favorite data center. If the Google search engine didn't exist, the public would not miss it. Because there are lots of other search engines. But if Google took AdWords down, the Plaintiff's patented method, then many service marketplace transactions would stop, and that would be bad for everyone for a few weeks until the clients starting using another system. After a

new system was adopted the only difference would be the removal of excessive fraud, an added benefit.

The only resource the Defendant adds to the patented method to generate windfall profits, is creating large lists of users who are willing to try whatever technology is marketed to them. The Defendant adds nothing else in terms of resources, salesmanship, real estate, support, supporting services, to make the lead generation work. The Defendant does copy and implement someone else's patented research and development, then makes a few changes that add fraud and increase their short term revenue and collect all the lead revenue without paying any patent fees, copyright fees and ignoring copyright and patent laws.

What basis can a reasonable judge or jury claim there is not likelihood on the merits, based on what? The Courts never responded, only used their "no one is as blind as those who don't want to see" attitude to avert the question.

INFRINGEMENT DETERMINATION REQUIRES ONLY ONE HOUR

To ascertain infringement only requires one hour of time.

(i) review Plaintiff's explanation of the maximum price system in the first provisional application in July of 1999 and compare to claim 1 and determine if indeed claim 1 reflects the original invention and application.

(ii) review Plaintiff's screens and compare to Defendant's screens.

(iii) review Plaintiff's explanation of how the Lead Option Engine works and compare to AdWords and AdSense descriptions from the Defendant.

(iv) compare the instructive films of both Defendant and the Plaintiff,

(v) Review claim 1 and compare to Defendant's AdWords

(vi) review deconstruction document

A more thorough proceeding may include additional steps such as:

(vii) review a live session using ProjectWork.com and compare to AdWords live session.

Only one hour of time is required, if well prepared.

If the average high school student was given the following web sites in mixed up order:

priceline.com google.com/adwords ebay.com
myspace.com amazon.com projectwork.com
barnesandnoble.com facebook.com ebid.com
travelocity.com

and was asked to organize the web sites and put them in groups of two, where each group contains two web sites having the same general function, such as social networking, buying a plane ticket, or getting a business lead. The student may read the descriptions or register and use the web site to understand how it works. After grouping which web sites are the "same" or similar in function, most high school students would come up with:

facebook.com	=	myspace.com
amazon.com	=	barnesandnoble.com
priceline.com	=	travelocity.com
google.com/adwords	=	projectwork.com
ebay.com	=	ebid.com

in about 10 minutes of time. Before the Internet, no one could check any kind of patent infringement in an hour:

(i) Case files are available at desenbergVgoogle.com

(ii) Prosecution history is available through uspto.gov

(iii) Legal research is available via the Internet.

For the first time in mankind's history, some kinds of patent infringement can be ascertained in minutes instead of weeks and months when using traditional discovery procedures requiring actual physical machines and paper documents to be transported. It is time for a swift and equitable justice to occur.

IRREPARABLE HARM SUMMARY

This short analogy paints the heart of the irreparable harm truth. Imagine a professional basketball league unlawfully prevented a star player entry into the league. Further imagine that the star player filed a law suit, and asked for a preliminary injunction to stop the rule disallowing him to play, so he could play. And imagine that the Defense said, "The reason the Plaintiff plays the game of basketball is to earn money. Since monetary damages can cover his lost salaries, there is no irreparable harm because money can pay for the lost salaries. Who cares if he doesn't get to actually play basketball for the two years, it's all about the money." Except, the basketball player misses out on playing basketball, which is what he really wants to do.

Plaintiff in this case wants to write and enforce the standard architectures for the maximum price lead generation method industry for the United States of America by leveraging his patent rights to benefit the public interest.

Plaintiff wants not just money, Plaintiff wants to play. Plaintiff respectfully requests his rights be enforced

according to the patent laws of the USA as soon as possible so he can play now.

Plaintiff has presented this case to the federal courts of the United States in order to compare the Defendant's AdWords and AdSense systems and methods to claim one of the '732 patent to ascertain infringement. Plaintiff has been ready to analyze and discuss these issues for several years. Instead the Courts are requiring Plaintiff to teach them about how an Internet web site patent should be written to avoid being dismissed by a precedent set in an unrelated and irrelevant case that bears very little similarity to this case. This is not what patent litigation is about. Plaintiff is not here to teach the District Court and the Federal Circuit about how to write a proper Internet patent. That, they should already know. Plaintiff is here to compare claim one to the Defendant's system. And this is the what Plaintiff is asking the US Supreme Court to do next, ascertain likelihood on the merits properly because the other Courts refused for inappropriate causes and influences.

It only takes about an hour of time to know if Defendant infringes on the '732 patent.

REASONS FOR GRANTING THE PETITION

Startups who are popular, well financed, well connected politically with several government agencies should not be allowed to freely infringe, copy and distribute research and technology patented by other lesser known startups. In fact preventing this behavior is the foundation of patent law.

A patent is only useful for a limited time. Over 50% of the '732 patent's use has already expired. Of twenty (20) years,

only nine (9) years are left; hence not ordering a preliminary injunction, in this case, is tantamount to agreeing that well financed startups should be able to infringe on copyrights and patents for as long as the Federal Civil Procedures allows.

This case can be a landmark case showing Internet inventors and businesses how to best leverage Internet patent law to benefit all parties involved, by suggesting that Internet inventors should offer something to the public interest, such as quality assurance, with a reasonable fee structure. This case can be a guide for a standard fee structure and a new use of the preliminary injunction for Internet cases such as:

(i) the halting of the origination of the product or service, while

(ii) allowing the defendant to re-sell the product or service,

(iii) thereby upholding the patent rights of the inventor, and

(iv) enabling the infringing company to continue to earn reasonable fees

(v) during the term of the litigation.

This case will be of national interest.

The decisions of this Court have violated Section 8, Article 1 and have instead, given patent rights to the first to copy and distribute rather than to the patent owner and inventor. This error, which goes to the heart of patent enforcement, could undermine the patent law's promotion of innovation and certainly will lead to an increase in intellectual property theft and continued bid rigging, thus review by this Court is necessary. Moreover, the Federal Circuit's exclusive appellate jurisdiction over patent disputes, 28 U.S.C. § 1295(a)(4), ensures that the issue raised in this case will

not be further vetted in the lower courts. Accordingly, this Court is the only forum available to correct the fundamental departure from statutory construction embodied by the Federal Circuit's decision.

CONCLUSION

A preliminary injunction in the context of patent law is a potent remedy, and a critical element that is required for patent law to actually function in the economy as intended. For without the threat of, or execution of, preliminary injunctions and permanent injunctions, patent law would be rendered useless.

The defendant is faced with an easy choice when a preliminary injunction is ordered:

> (i) relinquish the origination of the leads, and instead resell leads and continue to enjoy 90% of the revenue they currently enjoy, and remove the bid rigging scheme which is named "Quality Score", and continue earning billions of dollars from the use of the technology protected by the '732 patent, or
>
> (ii) change their system, making it not work so well, and lose more than half of their business because of the inefficiencies of other systems and continue with their bid rigging schemes and risk more damage to their brand, as well as additional anti-trust violation litigation, and lose their "best cost" reseller status with the patent owner, and risk permanent injunction at a later date.

Recognizing that a preliminary injunction is a powerful and coercive remedy and is sometimes appropriate, and in this case, required to remove bid rigging and excessive

fraud currently at over $3 billion per year as reported by "The Economist" journal;

the courts have repeatedly ordered preliminary injunctions in patent cases involving extraordinary circumstances that meet the traditional four factor test.

In particular, § 283 of the Patent Act provides that an injunction should issue to prevent future violations when the relief comports with the principles of equity. 35 U.S.C. § 283.

The Federal Circuit has decided to ignore this rule. And in its place, the courts have authored its own variant of § 283, replacing equitable discretion with a virtually irrebuttable presumption that preliminary injunctions should not issue against large venture capital backed companies involving billions of dollars on behalf of entrepreneurs of small start ups who had their research and development copied by the large venture capital invested companies; and

a preliminary injunction should not be granted, nor a Markman hearing be granted, nor discovery be granted, nor any extrinsic evidence be diagnosed;

even in the presence of exceptional circumstances where injunctive relief is the only speedy resolution to the continued harm endured by the public interest by Defendant's bid rigging and excessive fraud, which endangers the public health;

and where the only resolution to completely halting the irreparable harm endured by the Inventor is a preliminary injunction.

The consequences of this rule are clear. Injunctions will never issue against startups that become large companies who have no patents and that steal the research and development of startup that are small companies that do have patents. But the patent laws, and principals of equity

dictate that Plaintiffs who continue to suffer daily immense irreparable injury, and who shall never be compensable by any amount of money for past and future damages, should benefit from a preliminary injunction, especially where their future losses may include the long term effects of:

(i) not engaging in long term business relationships because the defendant is engaging in those business relationships
(ii) not engaging in the authoring of standard architectures,
(iii) the branding lost,
(iv) loss of related business services deployment.

Given that the ebay/MercExchange case indisputably imbues districts courts with the responsibility of properly performing a determination if a preliminary injunction is appropriate, on a case by case basis, these rulings cast serious doubt, and thus warrant this Court's further review.

In light of the dramatic rise in patent litigation, the Federal Circuit's lack of distinguishing a pioneer patent from a invalid patent from a patent troll, and their multi-party automatic dismissal rule, will have a significant and detrimental impact on innovating companies and on the very structure of intellectual property theft and ownership.

If the Courts, as they have, are permitted to take a "no one is as blind as those who don't want to see" attitude, the resulting harmful impact on the United Sates of America will be incalculable. Thus, Plaintiff respectfully requests that his patent rights be enforced via an appropriate court order as soon as possible, so the Plaintiff can immediately remove the bid rigging, and begin to chip away at the huge excessive fraud beast the Defendant has used ten years to create.

For these reasons the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Supreme Court U.S.
FILED

In The

Supreme Court of the United States

Roger Marx Desenberg
Petitioner.

v.

Google, Inc.
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit

APPENDIX VOLUME 1

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7. Federal Circuit Affirms Dismissal	08/31/2010

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ROGER MARX DESENBERG.

Plaintiff,

-against- Case No. 08 Civ. 10121 (GBD) (AJP)

Google, Inc..

Defendant

Date Filed: 03/27/2009

ORDER

Defendant's motion to dimiss was filed on March 20, 2009. Plaintiff's opposition papers would be due April 3. 2009, but the Court extends the time for him to file his opposition papers to April 13, 2009. Defendant's replay papers shall be due April 21, 2009. If either party needs an extension, they shall promptly seek it.

The Court stays discovery because of the pending motion to dismiss, until the Court decides the motion to dismiss or until further Court Order.

The parties are advised that my chambers (Room 1370, 500 Pearl Street) are to be provided with a (paper) courtesy copy of all papers already filed and all papers hereafter filed with the Court. The parties are to follow the "Individual Practices of Magistrate Judge Andrew J. Peck." a copy of which is attached.

SO ORDERED.

Date: New York. New York
March 27. 2009

Andrew. J. Peck

United States Magistrate Judge

Copies to: Roger Marx Desenberg
Charles K. Verhoeven. Esq. (Fax)
Edward J. DeFranco. Esq. (Fax)
Judge George B. Daniels

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER MARX DESENBERG.

Plaintiff.

Plaintiff

-against- Case No. 08 Civ. 10121 (GBD) (AJP)

Google, Inc.,

Defendant

Date Filed: 04/28/2009

ORDER

ANDREW J. PECK, United States Magistrate Judge:

Pro se plaintiff Roger Marx Desenberg recently has filed various affidavits and motions (Dkt. Nos. 27-38.) The Court deals with them as follows:

1. Docket Nos. 27 and 28 are Desenberg's declarations, but they do not relate to any motion or any other issue presently before the Court. To the extent they may relate to issues that may come up at trail, they are premature. The Court willl take no further action as to these declarations.

2. Docket No. 29, "Plaintiff's Motion for the Court to Test Web Sites, etc.," is DENIED. Once the pending motion to dismiss is decided, discovery can begin. Discovery is done by the parties. The Court does not "test" things until trial. Docket No. 30 is Desenberg's

declaration explaining how to test things; it has no relevance at this stage of the case.

3. Docket No. 31 is entitled "Plaintiff's Motion to Grant the Desenberg Stipulation" but also is titled "Plaintiff's Motion to Remove Irreparable Harm." The motion is DENIED. In essence, Desenberg is asking to be able to "preserve that status quo" by allowing him to "run his invention" for a time to earn money to pay for his lawsuit. The motion is largely incomprehensible by in any event fails to meet the standard for a TRO or a preliminary injunction. Nor does it preserve the status quo but rather changes it. The motion is DENIED.

4. Docket No. 32, "Plaintiff's Motion for Temporary Restraining Order to Preserver the Status Quo" is similar to Docket No. 31 and is DENIED for the same reason - among other things, it actually seeks to change the status quo, and does not show a likelihood of success on the merits or irreparable harm.

5. Docket No. 33, "Plaintiff's Motion to Grant the Desenberg Stipulation," is DENIED as frivolous. A stipulation is a willing agreement of the parties. Here, there is no such agreement.

6. Docket No. 34, "Plaintiff's Offer of Voluntary Enjoinment and Settlement for Damages," is similarly DENIED. A "voluntary" injunction and a settlement require both parties to agree. There is no such agreement here (and it is clear that Google will not voluntarily pay the $3 billion that Desenberg suggest as the settlement amount).

7. Docket No. 35, "Plaintiff's Withdrawal of Motion for Preliminary Injunction" is GRANTED only to the extent of withdrawing plaintiff's prior motion for a preliminary

injunction.

8. Docket Nos. 36-38 are Desenberg's declarations in support of certain of the above motions. They require no sepearate Court action at this time.

* * * *

The Court strongly recommends that plaintiff Desenberg obtain an attorney for this litigation. A patent case is no place for a pro se litigant. (Plaintiff may wish to dismiss this case without prejudice until such time he can obtain counsel - see Fed. R. Civ. P. 41.)

SO ORDERED.

Dated: New York, New York
April 28, 2009

/s
Andrew J. Peck
United States Magistrate Judge

Copies by fax to: Roger Marx Desenberg (Regular and Certified Mail)

Edward . DeFranco, Esq.
Patrick D. Curran, Esq.
Charles K. Verhoeven, Esq
Judge George B. Daniels

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ROGER MARX DESENBERG.

Plaintiff.

-against- Case No. 08 Civ. 10121 (GBD) (AJP)

Google, Inc..

Defendant

Date Filed: 04/28/2009

REPORT AND RECOMMENDATION

ANDREW J. PECK, United States Magistrate Judge:

To the Honorable George B. Daniels, United States District Judge:

Pro se plaintiff and inventor Roger Marx Desenberg brought this action alleging that Google's "AdWords" system directly and indirectly infringes Desenberg's patent, U.S. Patent No. 7.139,732. (Dkt. No. 1: Compl. ¶¶ 11-12. 19, 21, 26-31.)

Presently before the Court is Google's motion to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (Dkt. No. 13: Google Notice of Motion). on the grounds thBr. at 7-12).[1/]

For the reasons set forth below. Google's motion to dismiss for failure to state a claim (Dkt. No. 13) should be GRANTED and Desenberg's complaint should be dismissed.

FACTS

The facts alleged in Desenberg's complaint are assumed to be true for purposes of this motion, and will be set forth herein without use of the preamble "Desenberg alleges."

Desenberg and His Patent

Desenberg is an "[i]nventor, an economist, and software engineer" with "experience in architecting mission critical software systems using rapid application development techniques for many clients and many projects." (Dkt. No. 1: Compl. ¶ 4.) In 1999, Desenberg completed the "first implementation of the invention," which "included several entities to create a balanced and regulated lead generation marketplace wherein excessive fraud would be prevented," and began a lengthy and protracted patent prosecution process. (Compl. ¶¶ 4-19.)

On November 21, 2006, the United States Patent and Trademark Office issued to Desenberg U.S. Patent No. 7,139,732 ("the '732 patent" or "the patent"), entitled "Systems, Methods, and Computer Program Products Facilitating Real-Time Transactions Through The Purchase of LeadOptions." (Compl. ¶ 19 & Ex. Q: Patent No. 7,139,732 Text; accord Dkt. No. 15: DeFranco Aff. Ex. A: Patent No. 7,139,732.)

1/ Google also moved to dismiss for Desenberg's lack of standing and failure to join an indispensable party (Google Br. at 6, 12-13) – arising from Desenberg's December 20, 2007, assignment of all rights in his patent to his wholly-owned company RMD IP LLC, a non-party. (See Dkt. No. 15: DeFranco Aff. Ex. B: 12/20/07 Patent Assignment.) On November 20, 2008, however, one day prior to the commencement of the instant litigation, RMD IP LLC re-assigned the patent, nunc pro tunc, back to Desenberg. (See Dkt. No. 38: Desenberg Aff. Ex. F: 3/21/09 Patent Assignment Notice of Recordation.) Desenberg, therefore, has standing to bring the instant litigation, and is not required to join RMD. Indeed, Google's reply brief withdrew this aspect of its motion. (Dkt. No. 39: Google Reply Br. at 2.)

The Patent's background and summary of the invention describe the invention as an internet-based system, method, or program that "facilitate[s] real-time service transaction between two or more users, including at least one client and at least one service provider," as follows:

> Service providers complete project profiles identifying projects they wish to work on, and clients complete project profiles identifying projects they would like to pay service providers to complete. . . . Both the clients and service providers may then purchase lead options to identify their desire for obtaining a matching user. The lead options can be a sum of money a user wished to pay for a lead. The present inventionthen determines matching clients and service providers based upon the projectprofiles, and identifies to one or more lead option submitting users the immediatelyavailable users that match the project profile submitted by the user.

(DeFranco Aff. Ex. A: '732 Patent "Summary of the Invention," col. 2, l. 48-62.) Various embodiment[s]" or "aspect[s]" of the invention describe different methods or systems of interaction between users – clients and/or service providers – and the lead option engine. (Id. at col. 2-4.) In addition, the patent's drawing sheets depict block diagrams which appear to document the invention as requiring the participation of three types of parties: the "lead option engine," a "client," and a "service provider." (DeFranco Aff. Ex. A: '732 Patent Fig. 1.)

The Patent's sole independent claim, the first of eighteen claims, claims "[a] method for a user using a communication network to search for and identify at least one matching provider of project work." (DeFranco Aff. Ex. A: '732steps including, among other things:

> transmission of a lead comprising contact information that enables communication

> between the user and the provider. . . . . comparing the respective maximum lead
> prices to determine a lowest respective maximum lead price: identifying the provider associated with the lowest one of the respective maximum lead prices; . . . . receivingfrom a user or provider a request for contact information, ... enablingcommunication between the user and at least one of the first provider and second provider; . . . . [and] providing . . . at least one lead to the user or provider for projectwork."

(DeFranco Aff. Ex. A: '732 Patent col. 16-17.) The seventeen dependent claims describe various implementations for the first claim's method. (DeFranco Aff. Ex. A: '732 Patent at col. 17-18.)

Google's Alleged Infringement of Desenberg's Patent

According to Desenberg, in 2000 "Google began using [Desenberg]'s invention," generating "more than ninety percent (90%) of all of Google's revenue . . . . [or] approximately $25 billion of revenue." (Dkt. No. 1: Compl. ¶¶ 11, 25.) In 2003, Desenberg "became aware that Google was using his invention" upon "inspecting [Google's] AdWords system" when "consider[ing] registering for Google's AdWords to help sell his house." (Compl. ¶ 12.) On November 21, 2006, Desenberg sent Google a cease and desist letter and proposed a "fair and reasonable fee system" of a 10% royalty and "preliminary injunction plan" for Google to compensate Desenberg for use of his patent without interrupting Google's operations or inconveniencing its customers. (Compl. ¶¶ 21-23 & Ex. E: 11/21/06 Letter.)

On or about November 21, 2008, Desenberg commenced this litigation, alleging that Google directly and contributorily infringed and induced infringement of Desenberg's patent when it "used, sold or offered to sell. .

. . an Internet system and/or service that infringes each of the elements of one or more claims of Patent 732, without license from the Inventor." (Compl. ¶¶ 26-28 & Ex M: Claim Deconstruction Docs.) Specifically, Desenberg claims that "Google's AdWords and AdSense systems infringe[] on each one of the fifteen phrases contained in Claim 1 of Patent 732 under the scenario where a vendor pays for AdWords and obtains a lead, and a service transaction is consummated between the vendor and a customer as a result of the AdWords lead." (Compl. Ex A: Preliminary Injunction Plan at p. 3.)

Desenberg seeks damages, declarations that Desenberg's patent "was duly and legally issued" and that Google directly or contributorily infringed upon his patent, and an injunction barring Google from further infringing on his patent. (Compl. ¶ 32.)

ANALYSIS

I. THE STANDARDS GOVERNING A MOTION TO DISMISS

A. The Twombly-Iqbal "Plausibility" Standard

In two decisions in the last few years, the Supreme Court significantly clarified the standard for a motion to dismiss as follows:

> Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." As the Court held in Twombly, the pleading standard Rule 8 announces does not require "detailed factual allegations," but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements

of a cause of action will not do." Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" Two working principles underlie our decision in Twombly. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Rule 8 marks a notable and generous departure from the hyper- technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - but it has not "show[n]" - "that the pleader is entitled to relief." Fed. Rule Civ. Proc. 8(a)(2).

> In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. [2/]

Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949-50 (2009) (citations omitted & emphasis added) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556-57, 570, 127 S. Ct. 1955, 1965-66, 1974 (2007) (retiring the Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102 (1957), pleading standard that required denying a Rule 12(b)(6) motion to dismiss "unless it appears beyond doubt that tcan prove no set of facts in support of his claim which would entitle him to relief.")).[2/]

[2/] Accord, e.g., Harris v. Mills, -- F.3d --, 2009 WL 1956176 at *4 (2d Cir. July 9, 2009); Lindner v. Int'l Bus. Machs. Corp., 06 Civ. 4751, 2008 WL 2461934 at *3 (S.D.N.Y. June 18, 2008); Joseph v. Terrence Cardinal Cooke Health Care Ctr., 07 Civ. 9325, 2008 WL 892508 at *1 (S.D.N.Y. Apr. 2, 2008); Elektra Entm't Group, Inc. v. Barker, 551 F. Supp. 2d 234, 237 (S.D.N.Y. 2008); Edison Fund v. Cogent Inv. Strategi2d 210, 216-17 (S.D.N.Y. 2008); Diana Allen Life Ins. Trust v. 2008 WL 878190 at *3 (S.D.N.Y. Mar. 31, 2008).

B. Consideration Of Documents Attached To Or Referred To In The Complaint

A Rule 12(b)(6) motion to dismiss challenges only the face of the pleading. Thus, in deciding such a motion to dismiss, "the Court must limit its analysis to the four corners of the complaint." Vassilatos v. Ceram Tech Int'l, Ltd., 92 Civ. 4574, 1993 WL 177780 at *5 (S.D.N.Y. May 19, 1993) (citing Kopec v. Coughlin, 922 F.2d 152, 154-55 (2d Cir. 1991)).[3/] The Court, however, may consider documents attached to the complaint as an exhibit or incorporated in the complaint by reference. E.g., ATSI Commc'ns, Inc. v. Shaar Fund, Ltd., 493 F.3d 87, 98 (2d Cir. 2007); Chambers v. Time Warner, Inc., 282 F.3d 147, 153 (2d Cir. 2002) ("Because this standard has been misinterpreted on occasion, we reiterate here that a plaintiff's reliance on the terms and effect of a document in drafting the complaint is a necessary prerequisite to the court's consideration of the document on a dismissal motion; mere notice or possession is not enough."); Yak v. Bank Brussels Lambert, 252 F.3d 127, 130 (2d Cir. 2001) (citing Cortec Indus., Inc. v. Sum Holding L.P., 949 F.2d 42, 47 (2d Cir. 1991), cert. denied, 503 U.S. 960, 112 S. Ct. 1561 (1992)); Rothman v. Gregor, 220 F.3d 81, 88 (2d Cir. 2000) ("For purposes of a motion to dismiss, we have deemed a complaint to include any written instrument attached to it as an exhibit or any statements or documents incorporated in it by reference. . . ."); see also, e.g., Paulemon v. Tobin, 30 F.3d 307, 308-09 (2d Cir. 1994); Brass v. Am. Film Techs., Inc., 987 F.2d 142, 150 (2d Cir. 1993).

"However, before materials outside the record may become the basis for a dismissal, several conditions must be met. For example, even if a document is 'integral' to the complaint, it must be clear on the record that no dispute exists regarding the authenticity or accuracy of the document. It must also be clear that there exists no

material disputed issue of fact regarding the relevance of the document." Faulkner v. Beer, 463 F.3d at 134 (citations omitted).

In this case, documents that plaintiff Desenberg attached to or referred to in his complaint, and the documents submitted by defendant Google in support of its motion to dismiss and by Desenberg in opposition to Google's motion to dismiss (see Dkt. No. 15: DeFranco Aff. Exs. A- C; Dkt. No. 26: Desenberg Opp. Aff.), may be considered on the motion to dismiss, subject to the Faulkner v. Beer proviso.

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[3] Accord, e.g., Faulkner v. Beer, 463 F.3d 130, 134 (2d Cir. 2006); Amero Concrete Co. v. N.Y. City Constr. Auth., 94 Civ. 3506, 2000 WL 863208 at *31 (S.D.N.Y. June 27, 2000); Six W. Retail Acquisition, Inc. v. Sony Theatre Mgmt. Corp., 97 Civ. 5499, 2000 WL 264295 at *12 (S.D.N.Y. Mar. 9, 2000) ("When reviewing the pleadings on a motion to dismiss pursuant to Rule 12(b)(6), a court looks only to the four corners of the complaint and evaluates the legal viability of the allegations contained therein.")

When additional materials are submitted to the Court for consideration with a 12(b)(6)motion, the Court must either exclude the additional materials and decide the motion basedsolely upon the complaint, or convert the motion to one for summary judgment under Fed.R. Civ. P. 56. See Fed. R. Civ. P. 12(b); Friedl v. City of N.Y., 210 F.3d 79, 83 (2d Cir. 2000); Fonte v. Bd. of Managers of Cont'l Towers Condo., 848 F.2d 24, 25 (2d Cir. 1988).

The Court's role in deciding a motion to dismiss "'is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof.'" Saunders v. Coughlin, 92 Civ. 4289, 1994 WL 88108 at *2 (S.D.N.Y. Mar. 15, 1994) (quoting Geisler v. Petrocelli, 616 F.2d 636, 639 (2d Cir. 1980)); accord, e.g., Watson v.McGinnis, 964 F. Supp. 127, 130-31 (S.D.N.Y. 1997) (Kaplan, D.J. & Peck, M.J.). "'[T]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.'" Saunders v. Coughlin, 1994 WL 88108 at *2 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S. Ct. 1683, 1686 (1974)).

Even after Twombly and Iqbal, when reviewing a pro se complaint, the Court must use less stringent standards than if the complaint had been drafted by counsel and must construe a pro se complaint liberally. See, e.g., Harris v. Mills, -- F.3d --, 2009 WL 1956176 at *4 (2d Cir. July 9, 2009); LaBounty v. Adler, 933 F.2d 121, 123 (2d Cir. 1991); Watson v. McGinnis, 964 F. Supp. at 131; Saunders v. Coughlin, 1994 WL 88108 at *2 (citing Hughes v. Rowe, 449 U.S. 5, 101 S. Ct. 173 (1980)). However, "[d]ismissal under Rule 12(b)(6) is proper if the complaint lacks an allegation regarding an element necessary to obtain relief. . . ." 2 Moore's Federal Practice § 12.34[4][a], at 12-72.7 (2005). Thus, the "'duty to liberally construe a plaintiff's complaint [is not] the equivalent of a duty to re-write it.'" Id., § 12.34[1][b], at 12-61; see also, e.g., Joyner v. Greiner, 195 F. Supp. 2d 500, 503 (S.D.N.Y. 2002) (action dismissed because pro se plaintiff "failed to allege the facts tending to establish" that defendants violated his constitutional rights).

II. GOOGLE'S MOTION TO DISMISS DESENBERG'S COMPLAINT SHOULD BE GRANTED

Google argues that Desenberg fails to state a claim for direct patent infringement because, in contrast to binding Federal Circuit precedent, Desenberg's complaint "fails to allege that a single party performs 'each step of the patented process.'" and "[a]t best, it alleges that Google combines with its users and with AdWords advertisers . . . in an arms-length transaction that allegedly completes all steps of the method." (Dkt. No. 14: Google Br. at 10; see also id. at 7-11; Dkt. No. 39: Google Reply Br. at 2-7.)

"When deciding issues in a patent case, a district court applies the law of the circuit in which it sits to nonpatent issues and the law of the Federal Circuit to issues of substantive patent law." In re Omeprazole Patent Litig., 490 F. Supp. 2d 381, 399 (S.D.N.Y. 2007) (citing Invitrogen Corp. v. Biocrest Mfg., L.P., 424 F.3d 1374, 1378-79 (Fed. Cir. 2005)); accord, e.g., Revlon Consumer Prods. Corp. v. Estee Lauder Cos., 00 Civ. 5960, 2003 WL 21751833 at *7 (S.D.N.Y. July 30, 2003) (Peck, M.J.).

In BMC Resources, Inc. v. Paymentech, L.P., the Federal Circuit clarified "the proper standard for joint [patent] infringement by multiple parties of a single [method or process] claim" when it held that "[d]irect infringement requires a party to perform or use each and every step or element of a claimed method or product." BMC Res., Inc. v. Paymentech, L.P., 498 F.3d 1373, 1378-79 (Fed. Cir. 2007); accord, e.g., Pfizer, Inc. v. Gelfand, 08 Civ. 2018, 2008 WL 2736019 at *1 (S.D.N.Y. July 9, 2008) (A method patent claim "is infringed only where the alleged infringer performs or uses 'each and every step or element of a claimed method or product.'") (quoting BMC).[4]

"This holding derives from the statute itself, which states 'whoever without authority makes, uses, offers to sell, or sells any patented invention within the United States, or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.' 35 U.S.C. § 271(a) (2000). Thus, liability for infringement requires a party to make, use, sell, or offer to sell the patented invention, meaning the entire patented invention." BMC Res., Inc. v. Paymentech, L.P., 498 F.3d at 1380 (emphasis added); see also NTP, Inc. v. Research In Motion, Ltd., 418 F.3d 1282, 1318 (Fed. Cir. 2005) ("A method or process consists of one or more operative steps, and, accordingly, '[i]t is well established that a patent for a method or process is not infringed unless all steps or stages of the claimed process are utilized.'") (quoting Roberts Dairy Co. v. United States, 208 Ct. Cl. 830, 530 F.2d 1342, 1354 (Ct. Cl. 1976)).

4/ BMC Resources rejected dicta in On Demand Mach. Corp. v. Ingram Indus., Inc., 442 F.3d 1331 (Fed. Cir. 2005), cert. denied, 549 U.S. 1054, 127 S. Ct. 683 (2006), suggesting that infringement may occur when "a party . . . performs some steps of a [method or process patent] claim in cases where a patent claims a new and useful invention that cannot be performed by one person." BMC Res., Inc. v. Paymentech, L.P., 498 F.3d at 1379. In On Demand, the Federal Circuit had "discern[ed] no flaw" in the following jury instruction.

> "It is not necessary for the acts that constitute infringement to be performed by one person or entity. When infringement results from the participation and combined action(s) of more than one person or entity, they are all joint infringers and jointly liable for patent infringement. Infringement of a patented process or method cannot be avoided by having another perform one step of the process or method. Where the infringement is the result of the participation and combined action(s) of one or more inued) persons or entities, they are joint infringers and are jointly liable for the infringement."

On Demand Mach. Corp. v. Ingram Indus., Inc., (continued)

The Federal Circuit, therefore, affirmed defendant Paymentech's non-infringement of the asserted patent, which disclosed a multi-step "method for processing debit transactions without a personal identification number (PIN)" between merchants and customers using a touch-tone phone, because defendant did "not perform every step of the method at issue in this case." BMC Res., Inc. v. Paymentech, L.P., 498 F.3d at 1375, 1378.

Desenberg's patent, as structured in the elements or steps comprising the patent's first claim (the only independent claim), clearly require the participation of multiple parties. Indeed, the method facilitates interactions between consumers and service providers in real-time (see pages 3-4 above), making multiple parties critical to the method's design and implementation. Desenberg perhaps could have drafted his patent claim so that one entity controlled all of the steps, but as written, the claim requires a series of interactions, transmissions and communications between "users" and "providers," similar to the multi-step patent process involving merchants and customers in BMC Resources. (See pages 3-4 above.) The Federal Circuit acknowledged "the difficulty of proving infringement of this claim format," but refused to "unilaterally restructure the claim or the standards for joint infringement to remedy . . . ill-conceived claims." BMC Res., Inc. v. Paymentech, L.P.,

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4/ 442 F.3d at 1344-45. BMC Resources held, however, that On Demand made no "analysis of the issues presented relating to divided infringement," and therefore "did not change the traditional standard requiring a single party to perform all steps of a claimed method," and "did not change [the Federal Circuit's] precedent with regard to joint infringement." BMC Res., Inc. v. Paymentech, L.P., 498 F.3d at 1380

498 F.3d at 1381. Desenberg's argument that the patent's independent claim "mentions only TWO parties, the 'user' and a 'provider'" (Dkt. No. 26: Desenberg Opp. Br. at 3, 5-6), does not remove this action from BMC Resources' holding which would require Desenberg to allege that Google performs both the "user" and "provider" steps in the claim, which Desenberg has not alleged and by the very terms of his patent, cannot realistically allege.[5/]

The Federal Circuit noted that "[a] party cannot avoid infringement, however, simply by contracting out steps of a patented process to another entity. In those cases, the party in control would be liable for direct infringement. It would be unfair indeed for the mastermind in such situations to escape liability." BMC Res., Inc. v. Paymentech, L.P., 498 F.3d at 1381. In Muniauction, Inc. v. Thomson Corp., discussing BMC Resources, the Federal Circuit recognized a range of multi-party relationships that may or may not support liability for infringement by one party:

> Accordingly, where the actions of multiple parties combine to perform every step of a claimed method, the claim is directly infringed only if one party exercises "control or direction" over the entire process such that every step is attributable to the controlling party, i.e., the "mastermind." At the other end of this multi-party spectrum, mere "arms-length cooperation" will not give rise to direct infringement by any party.

Muniauction, Inc. v. Thomson Corp., 532 F.3d 1318, 1329 (Fed. Cir. 2008), cert. denied, 129 S. Ct. 1585 (2009). This "control or direction" standard "may in some circumstances allow parties to enter into arms-length agreements to avoid infringement. Nonetheless, this concern does not outweigh concerns over expanding the rules governing direct infringement. . . . [and] can usually be offset by proper claim drafting. . . . [by] structur[ing] a claim to

capture infringement by a single party." BMC Res., Inc. v. Paymentech, L.P., 498 F.3d at 1381.

"Under BMC Resources, the control or direction standard is satisfied in situations where the law would traditionally hold the accused direct infringer vicariously liable for the acts committed by another party that are required to complete performance of a claimed method."[6/] Muniauction, Inc. v. Thomson Corp., 532 F.3d at 1330; see BMC Res., Inc. v. Paymentech, L.P., 498 F.3d at 1379 ("[T]he law imposes vicarious liability on a party for the acts of another in circumstances showing that the liable party controlled the conduct of the acting party.") In addition, Muniauction – where the patent at issue claimed an electronic method allowing municipal bond issuers to initiate and monitor bond auctions, and bidders to prepare, submit, and monitor bids – held that an alleged infringer that merely "controls access to its system and instructs bidders on its use is not sufficient to incur liability for direct infringement." Muniauction, Inc. v. Thomson Corp., 532 F.3d at 1322, 1330; see, e.g., Akamai Techs., Inc. v. Limelight Networks, Inc., 614 F. Supp. 2d at 121 ("Muniauction establishes that direction or control requires something more than merely a contractual agreement to pay for a defendant's services and instructions or directions on how to utilize those services."); Emtel, Inc. v. Lipidlabs, Inc., 583 F. Supp. 2d 811, 831 (S.D. Tex. 2008) ("BMC Resources and Muniauction teach that . . . [p]roviding data to another party, as in BMC Resources, does not support an inference of adequate 'direction or control.'

6/ At least one district court has held that "[w]hile a showing of vicarious liability is sufficient to find direction or control, it is not a necessary requirement." Akamai Techs., Inc. v. Limelight Networks, Inc., 614 F. Supp. 2d 90, 120 (D. Mass. 2009).

Controlling access to a system and providing instructions on using that system – 'teaching, instructing or facilitating of the other party's participation' in the patented system – as in Muniauction, does not show adequate 'direction or control.'") (citations omitted); Global Patent Holdings, LLC v. Panthers BRHC LLC, 586 F. Supp. 2d 1331, 1335 (S.D. Fla. 2008) ("[I]t appears that the level of 'direction or control' the Federal Circuit intended was not mere guidance or instruction in how to conduct some of the steps of the method patent. Instead, the court indicates that the third party must perform the steps of the patented process by virtue of a contractual obligation or other relationship that gives rise to vicarious liability in order for a court to find 'direction or control.'"), aff'd, 318 Fed. Appx. 908, 909 (Fed. Cir. 2009).

Google argues that its interactions with users and AdWords advertisers constitute arms-length transactions, and that Desenberg has not alleged that Google acts as a "mastermind" directing or controlling the actions or participation of users. (Dkt. No. 14: Google Br. at 10-11.) This Court agrees. Desenberg has not alleged that those who participate in Google AdWords do so at the behest of Google, even under an expansive interpretation of "direction or control," and although this Court sympathizes with the limitations that Desenberg faces in proceeding pro se, he has failed to properly allege that Google exercises even a modicum of control over Google AdWords users to satisfy the Federal Circuit's joint infringement standard.7/ Desenberg's direct infringement claim therefore should be DISMISSED. See also, e.g., Friday Group v. Ticketmaster, No. 08 CV 01203, 2008 WL 5233078 at *3 (E.D. Mo. Dec. 12, 2008) (Granting motion to dismiss patent infringement claim where "[p]laintiff's complaint . . . does not allege that any single defendant performed all of the steps of the method or that any defendant was the 'mastermind' behind the operation. Absent the allegation that one of

these defendants was the one that directed or controlled the method, Plaintiff fails to state a claim for direct infringement.") (citation omitted).

Desenberg's claim of contributory infringement also fails. "Indirect infringement requires, as a predicate, a finding that some party amongst the accused actors has committed the entire act of direct infringement." BMC Res., Inc. v. Paymentech, L.P., 498 F.3d at 1379 (citing Dynacore Holdings Corp. v. U.S. Philips Corp., 363 F.3d 1263, 1272 (Fed. Cir. 2004)); see also, e.g., Aro Mfg. Co. v. Convertible Top Replacement Co., 365 U.S. 336, 341, 81 S. Ct. 599, 602 (1961) ("[T]here can be no contributory infringement in the absence of a direct infringement."); ACCO Brands, Inc. v. ABA Locks Mfrs. Co., 501 F.3d 1307, 1312 (Fed. Cir. 2007) ("In order to prevail on an inducement claim, the patentee must establish 'first that there has been direct infringement . . . .'"). Because Desenberg's complaint does not allege that Google or any other entity has committed the entire act of direct infringement, Google's motion to dismiss Desenberg's direct infringement claims also should be GRANTED.

CONCLUSION

For the reasons stated above, Google's motion to dismiss (Dkt. No. 13) should be GRANTED and Desenberg's complaint should be DISMISSED.

FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the

7/ Desenberg makes no allegations regarding direction or control in his complaint, and makes only fleeting and conclusory statements in his opposition brief that "AdWords is [not] involved with '[M]ere "arms-length cooperation."'" (Desenberg Opp. Br. at 8, 13.)

Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections (and any responses to objections) shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable George B. Daniels, 500 Pearl Street, Room 630, and to my chambers, 500 Pearl Street, Room 1370. Any requests for an extension of time for filing objections must be directed to Judge Daniels (with a courtesy copy to my chambers). Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140, 106 S. Ct. 466 (1985); IUE AFL CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993), cert. denied, 513 U.S. 822, 115 S. Ct. 86 (1994); Roldan v. Racette, 984 F.2d 85, 89 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir.), cert. denied, 506 U.S. 1038, 113 S. Ct. 825 (1992); Small v. Sec'y of Health & Human Servs., 892 F. 2d 15, 16(2d Cir. 1989); Wesolek v. Canadair Ltd., 838 F.2d 55-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 *2d Cir. 1983); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(d).

Dated: New York, New York
July 30, 2009

Respectfully submitted,

Andrew J. Peck
United States Magistrate Judge

Copies to: Roger Marx Desenberg
(Regular & Certified Mail)
Edward J. DeFranco, Esq.
Judge George B. Daniels

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER MARX DESENBERG,

Plaintiff

-against- Case No. 08 Civ. 10121 (GBD) (AJP)

Google, Inc.,

Defendant

Date Filed: 01/11/2010

ORDER

GEORGE B. DANIELS, District Judge:

Pro Se Plaintiff Roger Marx Desenberg ("Desenberg" or "Plaintiff") brought this action against Google, Inc ("Google" or "Defendant") alleging that Defendant's "AdWords" system directly and indirectly infringed Defendant's patent, U.S. Patent No. 7,139,732. Defendant's moved to dismiss Plaintiffs complaint pursuant Fed. R. Civ. P. 12(b)(6). This Court referred the matter to Magistrate Judge Andrew J. Peck for a Report and Recommendation. Magistrate Judge Peck issued a Report and Recommendation ("Report") recommending dismissal of Plaintiff's complaint for a failure to state a claim for either direct or indirect patent infringement. This Court adopts the Report's recommendation that Defendant's motion to dismiss be granted.

The Court may accept, reject or modify, in whole or in part, the findings and recommendations set forth within the Report. 28 U.S.C. § 636(b)(1). When there are objections to

the Report, the Court must make a de novo determination of those portions of the Report to which objections are made. Id.; see also Rivera v. Barnhart, 432 F. Supp. 2d 271, 273, (S.D.N.Y. 2006). The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. See Fed. R. Civ. P. 72(b); 28 U.S.C. & 636(b)(1)(c). It is not required, however, that the Court conduct a de novo hearing on the matter. See United States v. Raddatz, 447 U.S. 667,676 (1980). Rather, it is sufficient that the Court "arrive at its own, independent conclusions" regarding those portions to which objections were made. Nelson v. Smith, 618 F.Supp. 1186, 1189-90 (S.D.N.Y. 1985) (quoting Hernandez v Estelle, 711 F.2d 619, 620 (5th Cir. 1983)). When no objections to a Report are made, the Court may adopt the Report if "there is no clear error on the face of the record." Adee Motor Cars, LLC v Amato, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005) (citation omitted).

In his report, Magistrate Judge Peck advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Plaintiff timely filed objections to the Report arguing that he satisfied his pleading standard. This Court has examined the objections and finds them to be without merit. Magistrate Judge Peck correctly determined that Plaintiff failed to state a claim for either direct or indirect infringement. Accordingly, the Court adopts the Report in its entirety.

Dated: New York, New York
January 11, 2010

SO ORDERED:

GEORGE B. DANIELS
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER MARX DESENBERG,

Plaintiff, 08 Civ. 10121 (GBD)(AJP)

- against -

GOOGLE, INC.,

Defendant.

OBJECTIONS TO THE REPORT AND RECOMMENDATION OF THE HON. MAGISTRATE JUDGE PECK, DATED JULY 30, 2009

Roger M. Desenberg
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Dated: 9/17/09 Plaintiff Pro Se

OBJECTIONS TO THE REPORT & RECOMMENDATION,DATED JULY 30, 2009

In his Report and Recommendation (hereinafter "R & R"), the Magistrate recommends that my complaint be dismissed for failure to state a claim. His Honor's decision is based on two grounds. He finds that I failed to allege one or another of two elements essential to my claim - specifically, "that any single defendant performed all of the steps of the [patented] method or that any defendant was the 'mastermind' behind the operation." 2009 U.S. Dist. LEXIS 66122, * 24 (S.D.N.Y. July 30, 2009)(AJP)(word in brackets added for clarity). Second, he finds that, given the patent's terms, I "cannot realistically" make either allegation because, were I to do so, the resulting causes of action would be implausible. R & R at * 20, 20 n.5.

The R & R is in error on both counts. It misconstrues my patent, misconstrues my pro se complaint, fails to give the PTO the deference it is due in patent matters, misapplies precedents from both the Supreme Court and Federal Circuit, and ignores the plain language of the Patent Act. Not only would there be nothing implausible in my making either of the allegations the R & R finds lacking, I believe in substance both have been made. I further believe that the Court is not entitled to make a plausibility determination with respect to my direct claims, and that, in any event, the particular patent-law standard the Court employed to judge plausibility is no longer valid.

Since these errors affect the entirety of the analysis set forth in the R & R, I object to all portions of the Report and respectfully ask the Court to reject His Honor's recommendation of dismissal.

Basic Principles Governing Determination Of The Motion

A complaint is only required to contain a "short and plain statement" of a claim, showing that the pleader is entitled to relief. While "bald assertions and con-clusions of law are insufficient" to satisfy that requirement, the pleading standard is unequivocally "a liberal one." Cooper v. Parksy, 140 F.3d 433, 440 (2d Cir. 1998). This is most especially true where the plaintiff is pro se. Estelle v. Gamble, 429 U.S. 97, 106 (1976). "Specific facts are not necessary . . .". Erickson v. Pardus, 551 U S. 80, 93 (2007), citing Bell Atlantic v. Twombly, 550 U.S. at 544 (2007). Statements in the complaint "need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Id.

A court's task in ruling on a 12(b)(6) motion is a very limited one. Its function is merely to assess the legal sufficiency of the complaint, not to weigh the evidence. Accordingly, its review is limited to the facts as asserted in the com-plaint, documents attached to the complaint and/ or incorporated in the complaint by reference. McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 191 (2d Cir. 2007). It is required to accept the factual statements in them as true, to read the plaintiff's pleading liberally, and to draw all reasonable inferences in plaintiff's favor. Id.. See also Pardus, 551 U.S. at 94 (citing Twombly and a long line of precedents).

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[1]Admittedly, I may not have used the precise formulation the Court was looking for, but I have made the allegations I was required to make in substance. (See discussion post at Point I (B) and II (C), III and IV (B) and (C)).

The issue the court must decide "is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Recovery may appear remote and unlikely on the face of the pleading, but that is not the test for dismissal." Bernheim v. Litt, 79 F.3d 318, 321 (2d Cir. 1996) (internal quotations, citations omitted). Accord, Twombly, 550 U.S. at 556 (citing Neitzke v. Williams, 490 U.S. 319, 327 (1989) ("Rule 12(b)(6) does not countenance ... dismissals based on a judge's disbelief of a complaint's factual allegations") and Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (a well-pleaded complaint may proceed even if it appears "that a recovery is very remote and unlikely"). The only test is whether plaintiff has stated one or more legally sufficient claims, once his factual averments are taken as true.

Unless it is clear that it would be futile to afford a claimant another opportunity, the plaintiff should be permitted to amend. This is especially true where the plaintiff is pro se.

"A document filed pro se is "to be liberally construed," Estelle, 429 U.S., at 106, 97 S. Ct. 285, 50 L. Ed. 2d 251, and "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," ibid. (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice").

Pardus, 551 U.S. at 93 (post-Twombly).

In making the Recommendation he did in this case, the Magistrate stood these time-worn principles on their head. He resolved ambiguities and drew inferences in defendant's favor, rather than in my favor, and rejected as 'implausible' very fundamental facts His Honor was required to take "as true."

I argue below that the R & R erred in finding that I did not state any valid claims. I believe I stated valid claims for the following: both single and divided infringement based upon the defendant's "use" of my method (Points I and II), direct infringement based upon it's selling, offering to sell and making my method and systems (Point III), and claims for indirect and contributory infringement (Point IV). I understand that my complaint may not have been artfully crafted; I do not believe that it was legally insufficient. However, if Your Honor finds the allegations to be deficient in any way, I respectfully ask permission to amend.

I. I Stated A Valid Claim For Direct Infringement Based Upon Google's Use of The Patented Process

The Magistrate found that I failed to state a valid claim for direct infringement based upon Google's use of the patented process. He appears to have reached this conclusion because: (1) he found that the law requires that one person perform each and every step of a claimed process or method in order to be liable for direct infringement; (2) he found that I had failed to make this allegation; and (3) that I could not plausibly make it (4) because he mistakenly believed my patent claims a process that requires the participation of two or three actors.

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[2] While I refer in this brief to my patent as a "method patent," it is more than that. It also covers patented "systems and computer products." Indeed, this may be one of those instances in which the "[a]pparatus and method claims '. . . approach each other so nearly that it will be difficult to distinguish the process from the function of the apparatus.'" Quanta Computer, Inc. v. LGE Electronics, Inc., __ U.S. __, 128 SCt. 2109, 2117-2118 (2008).

The Report is in error on each count. First, my patent does not require that different actors perform different steps of the claimed method. It claims a method in which one actor performs all elements. (Pt A.) Second, although I undoubtedly did so inartfully, in substance I made each of the allegations the Court found to be required. (Pt B.) Third, the Court was not entitled to judge the plausibility of the claims I asserted for direct infringement. Twombly does not apply. (Pt C.) Fourth, while it was once believed that a single person had to perform "all elements" of a process in order for it to be infringed, the thinking on that issue has dramatically changed. (See Point II (4))

A. The Report Misconstrues My Patent

It has been the rule for nearly a century and a half that courts are to construe claims so as to preserve the validity of a patent. See, e.g., Turrell v. The Michigan Southern Railroad Co., 68 U.S. 491, 510 (1864); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577 (Fed. Cir. 1984). The R & R to which these Objections are addressed did the opposite. Had the claims set forth in my patent been construed in accordance with their plain meaning, the validity of the patent would have been preserved.

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[3] It is well recognized that use of the term "steps" does not in and of itself connote that operations disclosed by a claim have to be taken in a particular order. A sequential limitation will only be found where it is intended by the patentee. See, e.g., Performance Pricing, Inc. v. Google Inc., __ F.3d __, 2009 U.S. Dist. Lexis 71264, * 26-33 (E.D.Tex. 2009)(finding Federal Circuit decisions to be in accord). As was true in Performance Pricing, the claim language in my patent does not require any explicit, implicit or logical order. I use the term here for the sake of convenience only, and with that proviso in mind.

His Honor construed my patent as claiming a process that "requires a series of interactions, transmissions and communications between 'users' and 'providers,' similar to the multi-step patent process involving merchants and customers in BMC Resources." R & R at * 20. Both the description and comparison are off the mark.

BMC Resources v. Paymentech, Inc., 498 F.3d 1373 (Fed. Cir. 2007), concerned a patent for a method of processing debit transactions without a PIN number. The court construed the claims of the patent as requiring "the combined action of several participants": e.g., a customer, merchant (or payee's agent), remote payment network (such as an ATM network), and a card-issuing financial institution. Id. Each was required to perform distinct steps of the debit process claimed by the patent. For example, under the terms of the patent, a customer, using a standard touch-tone telephone, would "begin" the claimed process by placing a call to a merchant's payment agent "to initiate a spontaneous payment transaction." 498 F.3d at 1376. The agent called would collect payment information from the customer and, utilizing a different technology, "access[ ] a remote payment network" associated with an institution at which the customer was alleged to have credit or an account. Id. The accessed network would then "determin[e] . . . whether sufficient available credit or funds exist[ed]" to cover the payment amount. Id. at 1376, 1377. Based on its investigation, it would then either "authoriz[e]" or "decline" the transaction. Id. at 1377. If it approved the transaction, it would actually "charg[e] . . . the payment amount against the [customer's] account" and "add" it to an account for the payee's benefit. Id. In either event, it would "inform" the person calling it of its decision and actions, with that person passing the information back upstream to the original customer. If the transaction were declined, the payee's agent would "terminate" the payment transaction; otherwise, it would "inform" the customer that

"the transaction has been authorized." Id.

Unlike here, in BMC, the "parties agree[d] that Paymentech does not perform every step of the method at issue in this case." 498 F.3d at 1378. It could, accordingly, only be liable for infringement, the court concluded, on a theory of "joint" or "divided" infringement. Id. Under the applicable law at the time, to prevail on such a theory, the plaintiff had to allege and prove that the alleged infringer "controlled or directed" each step of the patented process. Id. at 1380. The Magistrate, District Court and Federal Circuit all concluded "that th[e] evidence . . . [plaintiff had presented] was insufficient to create a genuine issue of material fact as to whether Paymentech controls or directs the activity of the debit networks." Id. at 1381. They specifically found that "BMC's evidence that Paymentech provides data . . . to the debit networks, absent any evidence that Paymentech also provides instructions or directions regarding the use of those data, to be inadequate" to raise a triable issue. Id.

Significantly, however, the Federal Circuit went on to note that, with "proper claim drafting," a patentee could "structure a claim to capture infringement by a single party" even in the case of a process that contemplated the participation of several persons:

> In this case, for example, BMC could have drafted its claims to focus on one entity. The steps of the claim might have featured references to a single party's supplying or receiving each element of the claimed process.

498 F.3d at 1378. BMC's mistake was that it "chose instead to have four different parties perform different acts within one claim." Id.

The patent here did not make that mistake. On the contrary, it focuses on and was drafted from the perspective

of one and only one entity – the "LOE", i.e., the entity that matches service providers ("SP1-n") with pro-spective clients ("C1-n"), utilizing data received from them, and provides them with leads. The LOE is the middleman in this process, if you will, and the only one who performs the steps claimed by the patented process.

Thus, while it may be true, as the Magistrate suggests, that the effect of my patent is to "facilitate" initial contact between consumers and service providers, by providing them with leads, id at * 20, there is a critical difference between what the patented method might "facilitate" and the elements or steps of which it is composed. As an examination of the claims will confirm, it is only composed of operations undertaken by the LOE. (See Dkt. No. 1: Compl. & Ex. ___ (Patent). It is, thus, the LOE and the LOE alone that practices the patented method.

The independent claim (claim #1) is clear in this regard. Setting aside the claim preamble, which simply provides over-all context, the operations the claims describe are limited to those performed by the LOE. This is even obvious from the description of the method contained in the R & R. There, the Magistrate describes the claimed method as follows:

The method comprises a series of steps including, among other things:

> transmission of a lead comprising contact information that enables communication between the user and the provider; . . . comparing the respective maximum lead prices to determine a lowest respective maximum lead price; identifying the provider associated with the lowest one of the respective maximum lead prices; . . . . receiving from a user or provider a request for contact information . . . . enabling communication

between the user and at least one of the first provider and second provider; . . . . [and] providing . . . at least one lead to the user or provider for project work."

R & R at * 5 (S.D.N.Y. July 30, 2009)(quoting DeFranco Aff. Ex. A, '732 patent (hereinafter "Exh. A") at col. 16-17). Every single one of these acts is performed by the LOE. Not one of them is performed by a client or service provider.

The dependent claims and specification are to precisely the same effect. Thus, they describe the LOE as

(i) "receiving" information from a consumer or service provider in the form of provider profiles or "PPI's," see Exh A, claim 15;

(ii) "formatting" these profiles so as to enable them to be compared, Exh. A, claim 16;

(iii) "comparing" the profiles it receives and "defining [CHECK WORD] a set of providers based on that comparison, Exh. A, claim 8;

(iv) "matching" one or more service provider profiles with a request received from a consumer, Exh. A, claim 9;

(v) "providing" the consumer with a number of leads, Exh. A, claim 10;

(vi) "adjusting" the number of leads it provides, based upon a number of factors. Exh. A, claim 11;

(vii) "charging" one or more providers an amount corresponding with a "transaction lead price," Exh. A, claims 12, 13, 14;

(viii) "providing" or establishing a "transaction lead price increment value," Exh. , claim 18; and

(ix) "ranking" providers based upon the maximum lead prices associated with them, Exh. A, claim 18.

While C's and SP's obviously provide the raw materials (i.e., the data or "PPI's") the method utilizes, they do not perform any of its operations. On the contrary, it is clear on the face of the patent that "the method" claimed only begins after PPIs are "received."

The Magistrate came to the opposite conclusion, seemingly based on two things: a few sentences from the specifications and Figure 1 of the patent's drawing sheets. R & R at * 3-4. The two sentences the Magistrate focuses on read as follows:

The same was true in Muniauction, Inc. v. Thomson Corp., 532 F.3d 1318, 1328 (Fed. Cir. 2008)("the parties do not dispute that no single party performs every step of the asserted claims").

Although Muniauction involved a method for auctioning municipal bonds rather than a PIN less debit bill payment system, for all intents and purposes, the patents in Muniauction and BMC were identical. They each were drafted in such a manner as to require that different persons perform different steps in a specific sequence. They were not written from a single perspective and did not "capture" the actions of only one person. Thus, the very first step required by the Muniauction claims involved "inputting data associated with at least one bid . . . into said bidder's computer . . . .". 532 F.3d at 1322 (quoting the '099 patent). The court noted that this step "is completed by the bidder . . ," while other steps of the patented method were to be completed by the auctioneer or bond-issuer. Id. at 1328-29. (In fact, at least three steps - the "inputting," "submitting" and "communicating" steps - were to be performed by the bidder.) The issue thus became "whether the actions of at least the bidder and the auctioneer may be combined under the law so as to give rise to a finding of direct infringement by the auctioneer." Id. at 1329. The Muniauction court held that the bidders' actions could not be attributed to the auctioneer since it did not direct or control the bidder's actions. It followed that the defendant did not perform all steps of the claimed method.

"Service providers complete project profiles identifying projects they wish to work on, and clients complete project profiles identifying projects they would like to pay service providers to complete. . . . Both the clients and service providers may then purchase lead options to identify their desire for obtaining a matching user."

Id. Notably, there is no comparable language in the claims.

When these two sentences are read in the context of the specifications as a whole and the paragraph in which they appear, their meaning becomes clear. Once again, I quote from the R & R:

The systems, methods and computer program products according to the present invention facilitate real-time service transactions between two or more users, including at least one client and at least one service provider. Service providers complete project profiles identifying projects they wish to work on, and clients complete project profiles identifying projects they would like to pay service providers to complete. The project profiles includ[e] identifying parameters such as the type of service or project, start date, completion date, skills required for completion, and the like. Both the clients and service providers may then purchase lead options to identify their desire for obtaining a matching user. The lead options can be a sum of money a user wishes to pay for a lead. The present invention then determines matching clients and services providers based upon the project profiles, and identifies to one or more lead option submitting users the immediately available users that match the project profile submitted by the user.

R & R at * 3-4 (emphasis added). The first sentence describes the use to which the invention can be put and the transactions it is intended to make easier by enabling those who might have an interest in transacting to find one

another. The next sentences – which include the sentences upon which the Magistrate focused - describe actions that are not captured by the patent claims. They describe actions that are taken in anticipation of the patented method's being practiced and that provide the raw materials upon which the method operates. It is only with the following sentence, which reads – "The present invention then determines matching clients and service providers ..." -- that the description of the actual invention begins.

The fact that clients and service providers do not practice the patent when they "complete" and submit project profiles – and that these acts are not comprehended by the patented method -- is confirmed by the next paragraph in the specifications. There, the specification describes the method claimed by the patent as including: "registering a first user profile, . . . receiving first project profile information from the first user, ... registering a second user profile, . . . receiving second project profile information from the second user, . . . [and] matching the first user and second user based at least in part upon the first project profile information and the second project profile information." (Ex. A at _____. (emphasis added). Once again, these are all actions taken by the LOE.

Figure 1 is not to the contrary. Once again, it simply depicts the patented method in context. Thus, it shows the parties that provide raw data to the LOE and who are potentially matched by the invention. It does not purport to and cannot add additional "steps" to the patented method or alter the metes and bounds of the claims. United States v. Adams, 383 U.S. 39, 48-49 (1966); Johnson Worldwide Assocs., Inc. v. Zebco Corp., 175 F.3d 985, 989 (Fed. Cir. 1999); Philip v. Mayer, 635 F.2d 1056, 1061 (2d Cir. 1980)(while it is both common and appropriate for a court to examine specifications and drawings "for the purpose of understanding and interpreting the claims of the patent,"

neither can be utilized "to expand the patent monopoly"). Rather, "[a] court's analytical focus must begin and remain centered on the language of the claims themselves, for it is that language that the patentee chose to use to particularly point out and distinctly claim the subject matter which the patentee regards as his invention." Interactive Gift Express, Inc. v. Compuserve, Inc., 256 F.3d 1323, 1331 (Fed. Cir. 2001); SRI Int'l v. Matsushita Elec. Corp., 775 F.2d 1107, 1121 n. 14 (Fed. Cir. 1985)(en banc)(same).

In sum, the patent in this case discloses a method that is comprised of operations performed by one party. The R & R misconstrued the claims when it interpreted them as requiring different persons to perform different steps. In the final analysis, rather than construe my claims, the R & R rewrote them.

B. The Report Misconstrues My Complaint

I made the allegation the R & R suggests was missing from my complaint - that defendant performs every element of the claimed method - both implicitly and explicitly. I made it implicitly because I recited the words of section 271(a) of the Patent Act in my complaint, see Complaint at ¶¶ 26-28, and the Federal Circuit says that the necessary allegation is implicit in the language I used. BMC Res., Inc., 498 F.3d at 1380 (noting that the requirement that an infringer perform each element of a claimed method or product "derives from the statute itself"). I also made the allegation explicitly in two places. I made it in the Complaint itself at ¶ 26 and I made it in my papers in opposition to the defendant's motion. See Complt, ¶ 26 (where I alleged "Defendant Google has used, sold or offered to sell . . . an Internet system and/or service that infringes each of the elements of one or more claims of Patent 732 . . .")(emphasis added). See also R & R at * 20, n. 5 (wherein the R & R acknowledges my explicitly

stating that "[d]efendant performs every step of the claimed method").

So, it is not that I failed to make the allegation. I did. The more fundamental problem would appear to be that the Magistrate finds the allegation to be implausible. R & R at * 20, n. 5. As I demonstrate next, however, His Honor was not entitled to judge the plausibility of my claims for direct infringement.

C. The Twombly-Iqbal "Plausibility" Standard Does Not Apply.

In Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), a group of telephone and internet subscribers charged Bell Atlantic with having violated section 1 of the Sherman Act. They accused local exchange carriers of parallel billing and contracting practices with the intent of stifling competition. While assuming the basic assertion of parallel conduct to be true, the Court required that additional facts be asserted from which unlawful intent could be inferred:

Because § 1 (15 U.S.C.S. § 1) of the Sherman Act does not prohibit all unreasonable restraints of trade, but only restraints effected by a contract, combination, or conspiracy, the crucial question is whether challenged anticompetitive conduct stems from independent decision or from an agreement, tacit or express.

550 U.S. at 553. Plaintiffs attempted to satisfy this requirement by "flatly plead[ing] that the defendants 'ha[d] entered into a contract, combination or conspiracy to prevent competitive entry . . . and . . . agreed not to compete. . . .'" Id. at 551 (internal quotation marks omitted). As the Supreme Court subsequently noted, the only fact they asserted as the basis for making this allegation was the defendants' parallel conduct. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009) (quoting the following from the Twombly complaint: "the defendants' 'parallel course of conduct . . .

to prevent competition' and inflate prices was indicative of the unlawful agreement"). In other words, the assertions were entirely circular.

While acknowledging that parallel conduct was "consistent with" the existence of an unlawful agreement, the Court observed that it was also "compatible with, . . . indeed . . . more likely explained by, lawful, unchoreographed free-market behavior." 129 S.Ct. at 1950. If defendants' motivation was the latter rather than the former, their behavior was entirely lawful. Thus, all the "well-pleaded facts" permitted the court to infer was the "mere possibility of misconduct." Id. In order to "nudge" its claim "across the line" from the merely "conceivable" to legally sufficient, plaintiff needed to allege additional facts from which a court could infer the existence of an unlawful conspiracy or agreement. Id.

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5 The patent claims in this case are unlike those in BMC and Muniauction. Indeed, they would appear to have been specifically drafted so as to avoid the problems the BMC Court found and in accordance with its instructions. Thus, my patent only claims the "registering" or "receipt" of PPI's and not their "inputting." That distinction is critical.

6 "LOE" stands for Lead Option Engine.

7 A claim preamble that simply states the general purpose or context of an invention is not limiting. E.g, Infosint, S.A. v. H. Lundbeck A/S, 603 F. Supp. 2d 748, 753-54 (SDNY 2009)(a claim preamble is only limiting "if it recites essential structure or steps ... '[I]f the body of the claim 'describes a structurally complete invention such that deletion of the preamble phrase does not affect the structure or steps of the claimed invention,' the preamble is generally not limiting ....'").

8 Although His Honor adopted the construction that the defendant advocated in this case, he did not adopt its grounds. The defendant urged him to base his construction - that different parties have to perform different steps of the method - on the wherein clause in claim 1. His Honor correctly rejected the wherein clause as a basis for decision. The wherein clause does not disclose a step that is part of the method being claimed. It describes a result that arises from it.

The decision in Iqbal, supra, is to the same effect. There, plaintiff accused high level officials of "invidious discrimination" against post-September-11 detainees in contravention of the First and Fifth Amendments. According to the complaint, they effected that discrimination by adopting a policy of holding detainees, classified as of "high interest," under unduly restrictive conditions until they were cleared by the FBI.

Just as the Court in Twombly assumed it to be true that the defendants had engaged in parallel conduct, the Court in Iqbal assumed it to be true that the defendants adopted the very restrictive policy attributed to them. It noted, however, that there were two alternative explanations for their behavior and, depending upon which explanation obtained, their actions would be lawful or unlawful. If they "purposefully adopted a policy of classifying post-September-11 detainees as 'of high interest' because of their race, religion, or national origin," their actions would be unlawful. 129 S.Ct. at 1952. Alternatively, if they acted for "a neutral, investigative reason," id. at 1949, such as a desire "to keep suspected terrorists in the most secure conditions available until the suspects could be cleared of terrorist activity," id. at 1952, their actions would obviously be lawful.

Because the Court found that plaintiff's complaint did "not contain any factual allegation sufficient to plausibly suggest petitioners' discriminatory state of mind," the complaint was subject to dismissal. Id. "Where the claim is invidious discrimination in contravention of the First and Fifth Amendments," the Court explained, "our decisions make clear that the plaintiff must plead and prove that the defendant acted with discriminatory purpose." Id. at 1948.

With one possible exception, the Twombly/Iqbal

"plausibility standard" has no application here. To state a claim for direct infringement, a plaintiff must assert two things: 1) that he holds a valid patent; and 2) that the defendant has committed one or another of five acts proscribed by the Patent Act. I have met these requirements. I alleged: 1) that I was issued a patent for my invention, entitled "Systems, methods, and computer program products facilitating real-time transactions through the purchase of lead options," on November 21, 2006, and 2) that the defendant has committed four of the five acts proscribed by the statute. Specifically, I allege that Google has made, used, sold and offered to sell my invention.

There is absolutely no ambiguity about this assertion and no further question to be determined. There is no question of intent to be determined because direct infringement is a strict liability offense. See, e.g., DSW, Inc. v. Shoe Pavillion, Inc., 537 F.3d 1342, 1348 (Fed. Cir. 2008). Thus, this is not a case in which a defendant is alleged to have engaged in behavior which is lawful, if the defendant acted with one intent, and unlawful, if he acted with another. There is therefore no occasion and can be no requirement to allege additional facts to demonstrate a particular intent.

Applying the Twombly/Iqbal standard notwithstanding the absence of such a requirement would permit a court to reject the most basic allegation in a complaint and subvert one of the longest-standing and most venerated rules: that, at this stage of a judicial proceeding, the factual allegations of a complaint must be taken as true. Not only is there no indication that Twombly/Iqbal was intended to change the law in this regard, the Supreme Court has disavowed any such intent. Pardus, 551 U.S. at 94.

There is yet a second reason Twombly does not apply

to require that additional facts be pleaded in this case: The allegations in my complaint track the language in Form 18, which is appended to the Federal Rules of Civil Procedure. The Appendix contains a variety of model complaints for use in commencing litigation. Form 18 is the model for use in commencing a patent infringement action. Its allegations are "extremely barebones." CBT Flint Partners, LLC v. Goodmail Sys., Inc., 529 F. Supp. 2d 1376, 1380 (N.D.Ga. 2007). All Form 18 requires is:

(1) a statement of jurisdiction,

(2) a statement that plaintiff owns the patent,

(3) a statement that the infringer has been infringing the patent by, e.g., "making, selling, and using" the patented method or device;

(4) a statement that the party has given the defendant notice of its infringement; and

(5) a demand for an injunction and/or damages.

Fed.R.Civ.P. Appdx., Form 18. I have clearly satisfied these requirements.

(Complt, ¶¶ 3, 19, 25, 26-28, 21, 25, 31, 32).

Since the allegations in my complaint are not appreciably different from the allegations in Form 18, they must suffice to state a claim. McZeal v. Sprint Nextel Corp., 501 F.3d 1354, 1356-1358 (Fed. Cir. 2008) (a complaint pleaded in conformity with the model Form is sufficient to avoid a Rule 12(b)(6) dismissal); Fed.R.Civ.P. Rule 84 ("The forms in the Appendix suffice under these rules and illustrate the simplicity and brevity that these rules contemplate").

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9 The Supreme Court characterized the basic allegation of parallel conduct as a "well-pleaded, nonconclusory factual allegation . . .". 129 S.Ct. at 1950.

In any event, the allegations in my complaint satisfy Twombly's plausibility requirement once my patent is correctly construed.

II. I Have Stated Valid Claims For Joint or Divided Infringement

In Point I, I demonstrated that my patent was misconstrued and that my legal claims satisfy the BMC rule. In this Point, I do the opposite. I assume, for the sake of argument, that the patent I was issued has been correctly construed – even though I cannot possibly conceive of its being given a construction other than the one described in Point I. I go on to demonstrate that, even assuming the correctness of the Magistrate's construction, I have stated valid claims because BMC no longer states valid law. (Pt A (1 - 3)). Indeed, I suggest that, in Quanta, the Supreme Court embraced principles that are incompatible with BMC and that establish a much more appropriate framework for judging joint or divided infringement. (Pt A (4). Finally, I demonstrate that I have stated valid infringement claims whether the standard that is applied is the one suggested by Quanta or the one articulated in BMC. (Pts B and C).

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[10] The only one of my claims that it could be argued has to satisfy the standard is my claim for indirect infringement. Its allegations clearly do. (See Point IV (C)).

[11] The determination of infringement requires a two-step process. The first step involves construing the patent's claims and is a question of law. The second step involves determining whether the accused device or method infringes the claims-as-construed and is a question of fact. Bayer A.G. v. Elan Pharm. Research Corp., 212 F.3d 1241, 1247 (Fed. Cir. 2000).

[13] McZeal referred to Form 16. After renumbering, the Form is now Form 18.

A. The BMC Rule Cannot Be Properly Applied So As To Invalidate A Patent

While framed in terms of failure to state a claim for infringement, in truth the R & R is an invalidity determination. It has effectively held that my patent is invalid on the ground that interactive processes do not constitute patentable subject matter. It appears to have employed the following (mistaken) logic to arrive at this conclusion:

First, it accepted the defendant's assertion that for a method patent to be infringed, a single actor must either:

- be capable of performing, and perform, all of its elements, or
- direct or control any elements he contracts out.

Second, it defined an interactive process as one that requires or involves the arms-length participation of more than one person.

It then reasoned from the preceding two premises that an interactive process does not qualify as patentable subject matter.

There are problems with each aspect of the syllogism. There is nothing in the Patent Act that either states that interactive processes are not patentable or distinguishes between different types of methods or processes. (Pt A (1)). If there is any ambiguity on the issue, it is for the agency charged with issuing patents and administering the Act to determine what constitutes patentable subject matter. (Pt A (2)). The statute requires that a specific procedure be followed before a patent can be declared invalid. It was not followed in this case. (Pt A (3)). Finally, the viability of the major premise upon which the R & R relied has been seriously called into question by a recent Supreme Court

decision. (Pt A (4)).

1. The Patent Act Simply Does Not Address The Question Of Whether Interactive Processes Are Or Are Not Patentable.

Section 1 of the Patent Act, 35 U.S.C. § 101, defines an "invention" as "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof . . . ". In turn, 35 U.S.C. § 100 defines the term "process" as meaning a "process, art or method," which can include "a new use of a known process, machine, manufacture, composition of matter, or material . . .". There is no provision anywhere in the Act, beyond the one just mentioned, that distinguishes between one type of process and another. There is certainly nothing in the Act that says that a process is either patentable or not based upon the number of persons who might theoretically have some input into it.

By ruling as he has in this case, the Magistrate has effectively held that all interactive computer programs are unpatentable. There is no surer way to render the Patent Act irrelevant to the digital age in which we live and, perhaps, no better way to ensure the law's obsolescence. Neither Congress, the PTO nor the Act requires this result. And, while momentarily, the Federal Circuit might have appeared to require it, the Circuit did not give the PTO the deference it was due when it decided BMC and Muniauction.

2. Provided It Acts Within Reason, It Is For The PTO, Not The Courts, To Decide What Constitutes Patentable Subject Matter.

In 2005, the Supreme Court made it unequivocally

clear that where a statute does not expressly answer a question regarding its scope or application, it is up to the agency entrusted with administering the statute to determine how it should be interpreted. National Cable & Telecommunications Ass'n v. Brand X Internet Servs., 545 U.S. 967 (2005). See also Cuomo v. The Clearing House Ass'n, LLC, __ U.S. __, 129 S. Ct. 2710 (2009)(contrary holding on the facts); United States v. Eurodif S.A., __ U.S. __, 129 S. Ct. 878 (2009); Chevron U.S.A. Inc. v. Nat'l Res. Defense Council, Inc., 467 U.S. 837, 844-845 (1984). It reasoned that any ambiguities that are left in a statute "within an administrative agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap ... ". Nat'l Cable, 545 U.S. at 980.

My patent does not claim an interactive process, of course. It only captures the actions of one party, the LOE. (See Point I.) As previously stated, however, for purposes of this section of the brief, I am assuming that the R & R correctly construed my patent. It construed my patent as though it claimed an interactive process.

To date, the Federal Circuit has only deferred to the PTO's interpretation of statutory provisions concerning "the conduct of proceedings in the Office," and interpretations of its own rules. See, e.g., In re Swanson and Guire, 540 F.3d 1368, 1375 (Fed. Cir. 2008). It has given the Office's other interpretations "no deference". Id. In doing so, it would appear to have relied on two authorities that are inapposite: Ballard v. Comm'r of Internal Revenue, 544 U.S. 40, 125 S. Ct. 1270, 1288-89 (2005), and Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 414 (1945). In each, the question was whether an agency's interpretation of its own rules should be given deference, not whether an agency is entitled to interpret a statute so as to "fill in statutory gaps." The latter question is clearly governed by National Cable, Cuomo and Eurodif. The Federal Circuit has not addressed these decisions.

A court in the position of deciding whether to uphold or overturn such an interpretation is required to undertake a two-step analysis. First, it asks "whether the statute's plain terms directly address the precise question at issue . . .". Id. at 986. Second, "if the statute is ambiguous on the point, then the court defers to the agency's interpretation--even if the agency's reading differs from what the court believes is the best statutory interpretation--so long as the construction is a reasonable policy choice." Id.

These principles have particular resonance for this case - where the P.T.O. has not only been given a general delegation of authority to administer the Act, but explicit authority to examine patent applications and issue patents, and the statute specifies that a presumption of validity attaches to each patent it issues. See 35 U.S.C. § 282.

3. Courts Can Only Invalidate A Patent Issued By The PTO In Accordance With The Procedures Set Forth In Section 282 Of The Act.

The R & R not only denies the P.T.O. the deference it is due, but turns the Patent Act on its head. Specifically, it invalidates the patent at a time, in a manner and on grounds that are inconsistent with the Act.

The statute declares that all patents are to be presumed valid and their invalidity determined on the grounds and in accordance with the procedures set forth in Section 282. Section 282 provides in pertinent part:

Such a construction would not only contradict 35 U.S.C. § 281 on its face, but raise serious constitutional questions. It would suggest that the government has effected a deprivation of due process and/or an unconstitutional "taking."

> A patent shall be presumed valid. Each claim of a patent (whether in independent, dependent, or multiple dependent form) shall be presumed valid independently of the validity of other claims; dependent or multiple dependent claims shall be presumed valid even though dependent upon an invalid claim. . . . The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity.

The following shall be defenses in any action involving the validity or infringement of a patent and shall be pleaded:

> (1) Noninfringement, absence of liability for infringement or unenforceability,
> (2) Invalidity of the patent or any claim in suit on any ground specified in part II of this title as a condition for patentability,
> (3) Invalidity of the patent or any claim in suit for failure to comply with any requirement of sections 112 or 251 of this.
> (4) Any other fact or act made a defense by this title.
> 35 U.S.C. § 282 (emphasis added).

By ruling in the manner and at the time that he has, His Honor has effectively deprived me of the statutory presumption to which I am entitled, improperly shifted the burden on the question of validity, and made a determination of invalidity without any of the requirements and safeguards suggested by section 282 being satisfied. Indeed, having already once been made to demonstrate that my methods, systems and computer-program products qualify as a patentable "invention," I am now being made to demonstrate it again. That is not supposed to happen: "Clearly, the applicant does not start over to prosecute his application before the district court unfettered by what

happened in the PTO." Hyatt v. Doll, __ F.3d ___, 2009 U.S. App. LEXIS 17849, * 56 (Fed.Cir. 2009)(quoting Fregeau v. Mossinghoff, 776 F.2d 1034, 1038 (Fed. Cir. 1985)).

4.There Is Serious Question As To Whether BMC Even Remains Valid Law.

As I have already noted, BMC effectively stands for the proposition that there is no such thing as divided infringement. In it, the Federal Circuit declared that, where the actions of two people combine to practice a patent, there is one and only one circumstance in which either will be liable for infringement: where one "directs or controls" the other's actions. 498 F.3d at 1378-1382. The United States Supreme Court recently debunked this notion. See Quanta Computer, Inc. v. LG Electronics, Inc., _ U.S. _, 128 S. Ct. 2109 (2008). Although its focus was on "patent exhaustion," it articulated principles that suggest that divided liability can be found in a case without any consideration of 'direction or control.' It suggests that a single actor can be found to have infringed if he has either practiced all of the inventive features of a patented method or sold a product that substantially embodies such features, without having been authorized to do so.

Quanta involved a cross-license agreement between LGE Electronics ("LGE") and Intel covering a patent portfolio relating to computer products and systems. The license agreement authorized Intel to "make, use, sell (directly or indirectly), offer to sell, import or otherwise dispose of" Intel products that practiced LGE's patents, but specified that no licenses were being extended to Intel's customers. A separate agreement required Intel to notify those who purchased from it that the license from LGE to Intel did not authorize Intel customers to combine licensed Intel products with non-Intel products.

Despite receiving this notification, Quanta Computer, Inc. proceeded to build computers that combined Intel chipsets with standard non-Intel parts. LGE responded by suing Quanta for infringing its method and apparatus patents. Quanta defended on the ground that Intel's sales qualified as authorized sales within the meaning of the "first sale doctrine," thereby exhausting LGE's patent rights. The district court and Federal Circuit rejected the defense on two grounds, finding that the patent exhaustion doctrine does not apply to method claims and that Intel's sales were unauthorized.

The Supreme Court reversed. In so doing, it announced important principles. First, while it recognized "that a patented method may not be sold in the same way as an article or device," it confirmed that a patented method can be sold. 128 S. Ct. at 2117. Second, it opined that the sale of an article that embodies the "central," "essential" or "inventive" features of a method patent or "all but practices the method" qualifies as such a sale, or at least one example of such a sale. Id. at 2119-2121. Third, it concluded that, where such a sale is authorized, it triggers the "first sale" doctrine. Id. at 2121-2122. In other words, it exhausts the patentee's patent rights with respect to that sale of the method and shields downstream purchasers. Id.

It is not clear to me whether His Honor decided the defendant's motion as a Rule 12(b)(6) motion or converted it into a summary judgment motion. While I do not recall being given notice of a conversion, I must admit that it is possible I was given notice and did not understand what was I was being told or its significance. If the motion was converted, I respectfully object on the ground that, as a result, I have been denied discovery to which I am entitled.

What the Court did not say, but logically follows from what it said, is that, where such a sale has not been authorized, it is infringing and does not shield downstream users or purchasers. In that circumstance, the patentee's rights are not exhausted by the sale and both the person selling an incompletely-practiced method and the person purchasing such a method may be pursued as infringers – even in those instances in which they act at arms-length. Several conclusions follow: First and most significantly, perhaps, for purposes of our current discussion, it requires the conclusion that, under certain circumstances, someone can infringe a patented method by practicing less than all of its elements or operations. Second, it suggests that whether one of several actors will be found to have infringed will not depend, in most instances, upon whether he "directs or controls" others. Third, it suggests that what it will depend upon is whether he or she has

-"perform[ed] all of the operations which contribute any claimed element of novelty" to the patented method, 128 S.Ct. at 2119;

-practiced its "central," "essential" or "inventive" features, id. at 2129-2120;

-"all but completely practice[d] the patent," leaving only "common processes" to be carried out by others, id. at 2120; or

-made or sold a product or method that substantially embodies the "essential features of [the] patented invention," id. at 2119.

The latter requirement will be met, the Court suggests, where a product has "no reasonable noninfringing use and include[s] all the inventive aspects of the patented methods," id. at 2122. It will also be met where the only remaining step necessary to completely practice a claimed method "is the application of common processes or the addition of standard parts." Id. at 2120.

In sum, Quanta implicitly recognizes the propriety of imposing joint or divided liability, in certain circumstances, on one of several actors for infringing a patented method. It also suggests several tests that might be employed in determining whether the standard for imposing such liability has been met.

B.I Have Stated Valid Claims Under The Standard Suggested by Quanta.

I have already demonstrated satisfaction of the requirement that I allege that the defendant performed all elements of my claimed method. (See Point I(B); R & R at *20, n. 5 (wherein His Honor acknowledged that I stated in my brief in opposition to defendant's motion that "defendant performs every step of the claimed method"). That allegation, alone, satisfies any pleading requirements associated with Quanta. This follows because any allegation that the defendant has performed the "inventive" features of my patented method is necessarily subsumed in the allegation that it has performed all elements. In other words, any allegations associated with the Quanta standard are lesser-included allegations.

C.I Have Stated Valid Claims Under The Standard Articulated In BMC.

To reiterate, in BMC, the Federal Circuit held that there was only one circumstance under which a single actor would be held to have infringed a method that requires the participation of multiple parties: where he exercises "control or direction" over the entire process such that every step is attributable to him. In such a circumstance, he can be held liable as the "mastermind." BMC, 498 F.3d at 1381; Muniauction, 532 F.3d at 1329. The R & R finds that I failed to allege that the defendant in this case exercised such "direction or control" over its users and service providers in their submission of "PPI's." It therefore finds

that my 'infringing use' claims should be dismissed. R & R at * 23-24. I respectfully object.

Since Form 18 only instructs a plaintiff to allege "use" and makes absolutely no mention of "direction or control," the latter allegation should not be required. See McZeal, 501 F.3d at 1356-1357 (the only allegations that are required to be included in a patent infringement complaint to state a valid claim are those set forth in the Form appended to the Rules). If the Court nonetheless requires the allegation, the statement I made in my opposition papers should be deemed to satisfy the requirement. See R & R at * 25, n.7 (wherein the R & R acknowledges my stating at Opp.Bf. 8, 13, that "AdWords is [not] involved with '[M]ere "arms-length cooperation.") That statement, while perhaps inelegantly expressed, is comparable to saying that Defendant 'directs or controlls' its AdWord users' performance.

At this point, I cannot be required to include further factual detail in my pleadings to support that allegation since I am first entitled to discovery on the issue. McZeal, 501 F.3d at 1358 ("the specifics of how . . . [the defendant's] purportedly infringing device works is something to be determined through discovery").

Put another way, the issue of "direction or control," like the more general issue of infringement, is a question of fact that cannot be determined on a Rule 12(b)(6) motion. It can only be addressed after discovery. At that time, if there is a genuine dispute with respect to the issue, its determination is for the jury. At this juncture, its determination is not for the Court.

In sum, for each of the above independently sufficient reasons, I must be deemed to have stated valid claims for infringement based upon Google's use of my patented method.

III. I Have Stated Valid Claims For Infringement Based Upon

Defendant's Making, Selling And Offering To Sell My Patented

Process, System and Products.

Patent infringement occurs, under 35 U.S.C. § 271, when someone "without authority makes, uses, offers to sell, or sells any patented invention." The R & R focused exclusively on the "use" component of this definition, to the total exclusion of the "make," "offers to sell" and "sells" components. Even assuming, for the sake of argument, that I had failed to state valid claims under the "use" component of § 271, I have clearly stated valid claims under each of the other components of the definition.

While for a long time it was thought that a claim could not be stated for "selling" and/or "offering to sell" a patented method, the thinking on that issue has dramatically changed over the past few years. In both Ricoh Co., Ltd. v. Quanta Computer, Inc., 550 F.3d 1325 (Fed. Cir. 2008), and NTP, Inc. v. Research in Motion, Inc., 418 F.3d 1282 (Fed. Cir. 2005), the Federal Circuit was asked to decide whether the defendant directly infringed under the "sell" and/or "offer to sell" prongs of section 271(a). Ricoh, 550 F.2d at 1334; NTP, 418 F.3d at 1318. In each instance, the Federal Circuit concluded that it did not need to decide the question and left the question open. Ricoh, 550 F.2d at 1335 ("As did the court in NTP, we conclude that we need not definitively answer this question"); NTP, 418 F.3d at 1320-1321 ("We need not and do not hold that method claims may not be infringed under the "sells" and "offers to sell" prongs of section 271(a)"). The question was academic in each instance because the Court concluded that the product, method or article being sold, or offered for sale, was not the plaintiff's "invention." Ricoh, 550 F.2d at 1335; NTP, 418 F.3d at 1321.

But, the Supreme Court now appears to have answered the question - at least in part - that the Federal Circuit left open, and to have answered the question affirmatively. Thus, in Quanta, it holds that selling an article or product that "substantially embodies" a protected method is tantamount, at least for some patent law purposes, to selling the method proper. Quanta Computer, Inc., 128 S.Ct. at 2117 ("It is true that a patented method may not be sold in the same way as an article or device, but methods nonetheless may be 'embodied' in a product, the sale of which exhausts patent rights"). Although the Quanta Court had no occasion to expressly apply the principles it articulated to the "infringement" context, because it found Intel's sale to be authorized, a logical reading of the Opinion strongly suggests that they are equally applicable in that context. In other words, I think it is fair to read the Opinion as supporting the proposition that a party that, without authorization, sells or offers to sell a patented process (or an article or product substantially embodying it) infringes the patent. I think it can also be said that, where a patent is a hybrid one - covering methods, products and systems - the unauthorized "making" of a product or system that substantially embodies its features likewise infringes.

Although the paragraphs in my complaint, in which I allege my "making," "selling" and "offering to sell" claims, simply recite the language of the statute, see Complt at ¶¶ 26-28, both the Federal Circuit and Federal Rules suggest that my claims are legally sufficient. See McZeal, supra; Fed.R.Civ.P. 84; Fed.R.Civ.P. Appdx. Form 18. The R & R mistakenly ignored the claims and subsumed them in the dismissal.

IV. I Have Also Stated Valid Claims for Indirect Infringement

A. The R & R Erred In Concluding That Such Claims Could Not Be Stated As A Matter Of Law.

The R & R reasoned as follows: There can be no indirect or contributory infringement in the absence of direct infringement. See Aro Mfg. Co. v. Convertible Top Replacement Co., 465 U.S. 336, 341 (1961); ACCO Brands, Inc. v. ABA Locks Mfr. Co., 501 F.3d 1307, 1312 (Fed. Cir. 2007); Dynacore Holdings Corp. v. U.S. Philips Corp., 363 F.3d 1263, 1272 (Fed. Cir. 2004). Given patent '732's terms, there can be no viable claim for direct infringement of its claims because no single actor could perform all its steps. See R & R at * 15-24, 25 ("Desenberg's complaint does not allege that Google or any other entity has committed the entire act of direct infringement ..."). The patent claims cannot be indirectly infringed, either. Id.

As we have already seen, however, the R & R's second premise is unsustainable. Direct infringement claims can be and have been properly stated. The R & R concluded otherwise because its analysis was shaped and informed by four errors. It mistakenly construed my patent as requiring that different parties perform different steps. (A proper construction of my patent claims would disclose a method performed by one party.) It mistakenly concluded that I could not allege "direction or control" by the defendant over all of the method's operations. (In fact, even if one were to accept the R & R's thesis that clients and service providers 'initiate' certain steps, the inescapable truth is that the defendant "controls" their execution or performance.) It applied the legal standard set forth in BMC, even though its soundness is in question. (The Supreme Court articulated principles in Quanta that are fundamentally incompatible with BMC and would appear to require a very different

standard. Under this new standard, a defendant infringes if it performs all of the "essential" or "inventive" features of a patented method, rather than "each and every" element or step.) Finally, it disregarded the fact that, in addition to my "infringing use" claims, I stated other claims for direct infringement. Namely, I alleged that, in addition to engaging in infringing use, the defendant directly infringed my patent by selling, offering to sell and making my claimed invention. (See Point III.)

Where the latter acts are unauthorized, as here, Quanta confirms that the "first sale" doctrine does not apply and the patentee's patent rights are not exhausted. Stated another way, it confirms that the unauthorized sale of a method patent's "essential" or "inventive" features renders downstream purchasers and users vulnerable to direct infringement claims. By necessary implication, it also suggests the opposite - that those upstream who sold or performed the essential features may be liable for having "induced" and/or "contributed" to that infringement. In other words, it suggests that, where there is some evidence of direct infringement, a claim for indirect infringement can be stated against an upstream purveyor. The downstream infringers need not be joined in the suit, nor is direct evidence of their infringement necessary. Circumstantial evidence suffices. Symantec Corp. v. Computer Assocs. Int'l, Inc., 522 F.3d 1279, 1293 (Fed. Cir. 2008); Liquid Dynamics Corp. v. Vaughan Co., Inc., 449 F.3d 1209, 1219 (Fed. Cir. 2006); Abraxis Bioscience, Inc. v. Navinta, LLC, __ F.3d __, 2009 U.S. Dist. Lexis 66958, * 38-40 (D.N.J. 2009).

The Quanta Court had no occasion to address the question whether methods may be sold in other ways as well. That is, it did not consider whether someone might infringe by selling performances of the method. That further question is also posed by this case.

In sum, the R & R erred in concluding that my indirect infringement claims were precluded as a matter of law.

B. I Have Met My Notice-Pleading Obligations

Indirect infringement generally takes two forms. I have stated a claim for each type: inducement, in violation of 35 U.S.C. § 271(b), and contributory infringement.

Specifically, I have alleged that

. "[b]y making, using, selling, and/or offering for sale its Internet services, defendant Google has induced infringement . . . one or more claims of Patent 732 under 35 U.S.C. § 271 literally and/or under the doctrine of equivalents;"

."[b]y using, selling, and/or offering for sale its Internet services, defendant Google has . . . contributorily infringed . . . one or more claims of Patent 732 under 35 U.S.C. § 271 literally and/or under the doctrine of equivalents."

Complt. at ¶¶ 27, 28.

Nothing more is required by the Federal Rules, by the Federal Circuit and/or by Twombly. McZeal, , 501 F.3d at 1356-1358. This is so even though, arguably, on its face, Form 18 only provides a model for pleading direct infringement. "[T]here is no principled reason... for requiring more factual detail when the claim is one for contributory infringement as opposed to direct infringement." CB Flint Partners, LLC v. Goodmail Sys., Inc., 529 F. Supp. 2d 1376, 1380 (N.D.Ga. 2007). "The factual contentions in both the model and the Complaint are enough to put the Defendant on notice of the claim alleged and the grounds upon which it rests." Id.

C. I Have, In Any Event, Satisfied The Twombly/ Iqbal Standard

The principal thing that distinguishes indirect infringement claims from direct infringement claims is that the former require an allegation as to the defendant's knowledge and/or intent. See, e.g., Water Techs. Corp. v. Calco, Ltd., 850 F.2d 660, 668 (Fed. Cir. 1988) ("Although section 271(b) does not use the word 'knowing,' the case law and legislative history uniformly assert such a requirement"); Manville Sales Corp. v. Paramount Sys., Inc., 917 F.2d 544, 553 (Fed. Cir. 1990). Because this is so, it could be argued - as I noted in fnote [FILL IN]- that Twombly requires additional facts to be alleged to support that allegation.

I have more than satisfied this requirement by alleging specific facts from which knowledge and intent can be inferred. Specifically, I have alleged that:

- "On November 22, 2006, Google received documentation from ... [me regarding the patent and its issuance,] including a cease and desist letter and Google confirmed they received documentation from the Inventor." (Cmplt, ¶ 21).

- "Google requested a W-9 form be completed and signed by the Inventor, and stated that before they would pay the Inventor's first invoice ... the Inventor must deliver the W-9 form to Google." (Id.)

- "The Inventor completed the W-9 form and delivered the form to Google according to their instructions. Since, Google has never paid the Inventor anything in any form ...", Id., but has continued and is continuing to infringe. (Id.,¶ 27-28).

These allegations are not only sufficient to satisfy my notice-pleading obligations, and any obligations under Twombly, but also to support my allegation of "willfulness." (Cmplt at ¶ 29).

In sum, for each of the above independently sufficient reasons, I must be deemed to have stated valid claims for both direct and indirect infringement.

V. If The Court Finds Any Pleading Deficiencies, I Should Be Permitted To Amend

The Second Circuit has been unequivocally clear in stating that outright dismissals of pro se complaints are looked upon with disfavor. "Certainly the court should not dismiss without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated." Gomez v. U.S.A.A. Fed'l Savings Bank, 171 F.3d 794, 795 (2d Cir. 1999)(emphasis added), citing Branum v. Clark, 927 F.2d 698, 705 (2d Cir. 1991).

In an amended pleading, among other things, I would explicitly include the following averments:

(1) that defendant performed all steps of the patented process,

(2) alternatively, that it directed or controlled the performance of any step or steps undertaken by third-parties;

(3) that it performed all "central," "essential" and/or "inventive" features of the patented method or process, and otherwise acted so as to bring itself with the Quanta standard, and

(4) set forth separate claims for induced and

contributory infringement.

Conclusion

The Magistrate's Recommendation and Report was in error. My complaint should not be dismissed. If the Court finds any pleading deficiencies, I should be permitted to amend. Such an amendment would not be futile.

Dated: New York, New York
September 17, 2009

Respectfully,

_____

Roger M. Desenberg

Second Document from Plaintiff's
Newly Hired Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_ x

ROGER MARX DESENBERG, :
Plaintiff, : 08 Civ. 10121 GBD)(AJP)
- against - :
GOOGLE, INC., :
Defendant. :

_ x

PLAINTIFF'S MEMORANDUM IN REPLY TO DEFENDANT'S RESPONSE TO OBJECTIONS

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On July 30, 2009, Magistrate Peck recommended that the District Courtdismiss my patent infringement complaint in its entirety for failure to state aclaim. I filed specific Objections to the Report & Recommendation, detailing therespects in which it had erred. Defendant has now countered by filing a further memorandum, further affidavit and further evidentiary submission, which it characterizes as its "Response." Rather than respond to my arguments, however, these filings seek to avoid them. They do so in two ways. First, they distort my arguments so as to make it appear that I did not satisfy the "BMC rule." Nothing could be further from the truth. I demonstrated complete compliance with the rule. I demonstrated thatsince my patent claims capture the activities of only one person (the Lead OptionEngine), they fully satisfy BMC's requirements. (See Obj. at 4-20). Second, subtly and without acknowledging that it is doing so, the defendant has attempted to alter the basis upon which the Magistrate ruled. Thus, it pretends that the Magistrate concluded that different persons must perform different steps of my claimed method based upon the language of two "wherein clauses." (see Resp. at 6). In fact, His Honor did no such thing. He ruled to the same effect on other grounds. (See Point I (A), post.)

In addition, presumably in the hope that this Court will follow suit, defendant has almost entirely disregarded Points II, III and IV of my earlier brief.

While I do not in any respect retreat from any of the arguments contained in those points, I will not burden the Court by repeating them. I would simply refer the Court back to my earlier papers and to the following decisions in particular: Quanta Computer, Inc. v. LG Electronics, Inc., 128 S.Ct. 2109 (2008); Ricoh Co., Ltd. v. Quanta Computer, Inc., 550 F.3d 1325 (Fed. Cir. 2008); and McZeal v. Sprint Nextel Corp., 501 F.3d 1354 (Fed. Cir. 2007). Also, see

Qualters, "Federal Circuit chief: Let us handle the fixes," National Law Journal, October 05, 2009.

ARGUMENT

I. The Arguments Defendant Makes In Its Response Are Predicated On Fundamental Errors.

A. Defendant Has Misconstrued The Magistrate's Report.

In its Response, the defendant pretends that the Magistrate construed my patent claims based upon the language contained in a wherein clause. He did not. He did not even mention the wherein clause anywhere in his Report & Recommendation.

Defendant nonetheless states the following:

> Mr. Desenberg's patent claims, by their plain language, require affirmative acts by no fewer than three parties. Claim 1 — the patent's only independent claim — requires that "a service is performed by the user or the provider as a result of the transmission of the lead," and that "performance of the service includes a service transaction fee paid by the user or the provider." '732 Patent 16:54-58 (emphases added). These steps are required in addition to other steps by the "lead option engine." '732 Patent 14:62. Thus, as Magistrate Peck concluded, the "structure[] in the elements or steps comprising the patent's first claim.. . . mak[e] multiple parties critical to the method's design and implementation."

(R&R at 12). Response at 6 (emphasis as in the Resp.).

While I assume it was not intended to be so, this paragraph is misleading. It begins by quoting – with added emphasis – two phrases from the "wherein clause" that

the defendant urged the Magistrate make the basis of his ruling. It fails to mention the fact that the phrases are from the wherein clause, but they are. Next, it characterizes the activities described in those phrases as "steps" that are part of the claimed method, rather than simply as activities that are facilitated by or result from the method. Towards this end, it states: "These steps are required in addition to other steps by the 'lead option engine.'" Id. (emphasis added). Finally, it suggests that Magistrate Peck "concluded" that multiple parties are required to perform different steps of my method - based upon those phrases. Id.

Not only did the Magistrate not cite to or rely upon the wherein clause or either of those phrases in his R & R, he went to considerable lengths to delete the clauses from the claim language he quotes as being part of his basis for decision.

See R & R, 2009 U.S. Dist. LEXIS 66122, at * 5. There, he describes my patented method as being "comprise[d]" of "a series of steps" that are set forth in the patent's claim language. He then goes on to quote the language of Claim 1, being very careful to eliminate the language of the wherein clause. Id.

His Honor acted entirely appropriately in doing so. As we will hereafter see,claims construction principles require that the wherein clauses in this case be disregarded. (See Point I (B)(2)).

B. Defendant Has Misconstrued My Patent Claims

It is hornbook law that a patent is to be construed in accordance with its claims. Philips v. AWH Corp., 415 F.3d 1303, 1312 (Fed. Cir. 2005); Markman v. Westview Instruments, Inc., 52 F.3d 967, 980 (Fed. Cir. 1995).

This defendantinsists on my patent's being construed in accordance with everything but theoperative claim language. Thus, it insists on the patent's being construed in accordance with background that appeared in the specifications (Resp. at 2); in accordance with a drawing (Resp. at 3); in accordance with a statement attributed to the examiner (Resp. at 5-6); in accordance with a "claim chart" (Resp. at 7-8); and, of course, as I have already noted, in accordance with two wherein clauses. (Resp. at 2-3, and 6).

1. Defendant Has Attempted To Read Language Into My Claims That Does Not Belong in Them

None of the evidence upon which the defendant seizes can be relied upon either to alter my claims or add steps to my claimed method. All they do isprovide context; they do not describe the metes and bounds of my patent. (See Obj. at 6-14). This is true of the specifications, the drawings, the so-called 'claim charts' and prosecution history. Actually, there is no cause even to refer to such materials since there is no ambiguity in the claim language. See Abbott Labs v. Andrx Pharmaceuticals, Inc., 452 F.3d 1331, 1336 (Fed. Cir. 2006); Globetrotter Software, Inc. v. Elan Computer Group, Inc., 362 F.3d 1367, 1389-190 (Fed. Cir. 2004)("in construing a patent's claims, a court looks first to their language;" if it finds the claim language to be ambiguous, it then looks to the specifications, etc).

2. Defendant Has Attempted To Read Words Out Of Two "Wherein Clauses" In An Effort To Transform Them Into "Steps."

On pages 2 and 3 of its Response, the defendant states the following: Claim 1 requires that the service provider actually provide a service for the user, or vice versa, following transmission of the lead. See '732 Patent 16:54-

56 (requiring that "a service is performed by the user or the provider as a result of the transmission of the lead"). Claim 1 further requires that the service be a paid service. See id. 16:57-58 (requiring that "the service includes a service transaction fee") . . . (Resp. at 2, 3).

Although it purports, in each of its supporting parentheticals, to be quoting from my claims, in each instance it has omitted the opening words of the phrase it purports to be quoting. In both instances, the actual phrase begins with the word "wherein." Thus, each of the phrases is a "wherein clause" rather than a claimed step.

3. The Wherein Clauses Cannot be Relied Upon To Alter The Metes & Bounds Of My Claims

Defendant cannot rely on the "wherein clauses" to alter my patent claims. There are two reasons for this: First, although the Magistrate did not accept defendant's argument regarding the wherein clauses, the defendant did not file an objection. See R & R at *26 (specifying that "the parties shall have ten (10) days . . . to file written objections . . ."). Its objection was therefore waived. Thomas v. Arn, 474 U.S. 140 (1985); I.U.E. A.F.L.-C.I.O. Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993), cert. den'd, 513 U.S. 822 (1994).

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1 The R & R itself says as much. See R & R at * 26 (where it specifically provides notice to all parties that the "[f]ailure to file objections will result in a waiver of those objections for purposes of appeal.")(emphasis added).

Second, its argument is mistaken in any event. The law is clear that the language of a "whereby" or "wherein" clause is to be ignored where it does not add anything to the patented method or invention.

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2 The appellant in Keating v. Sec'y of Health and Human Servs., 848 F.2d 271 (1st Cir. 1988), attempted the same thing defendant is attempting here: to argue that the fact that plaintiff objected to the R & R preserves all issues for appeal. In other words, it suggests that a nonobjecting party can piggyback on an objecting party's filing. (Resp. at 5). The First Circuit was unequivocal in rejecting this suggestion. Keating, 848 F.2d at 275 ("[O]nly those issues fairly raised by the objections to the magistrate's report are subject to review in the district court and those not preserved by such objection are precluded on appeal"). The decisions of other Circuits are in accord. They all hold that the only issues that can be considered by a District or Appellate Court are those that have been "specifically" objected to. See generally, Frontier Ins. Co. v. Blaty, 454 F.3d 590, 594-596 (6th Cir. 2006); Castillo v. Matesanz, 348 F.3d 1, 4 n. 1 (1st Cir. 2003); Praylow v. Martin, 761 F.2d 179, 180 n.1 (4th Cir. 1985)(party which failed to file an objection to a particular point in magistrate's finding waived appeal on that point); McCarthy v. Manson, 714 F.2d 234, 237-38 (2d Cir. 1983)(failure to object results in collateral relief being barred); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980); John B. Hull, Inc. v. Waterbury Petroleum Prods., Inc., 588 F.2d 24, 29-30 (2d Cir. 1978), cert. den'd, 440 U.S. 960 (1979).

In addition to attempting an end-run around the rule that one can only preserve an issue by timely filing a specific objection, the defendant has attempted a second end-run. In objecting to an R & R before the District Court, a party has no right to present evidence or testimony it could have but did not present to the Magistrate. Paddington Partners v. Bouchard, 34 F.3d 1132, 1137-38 (2d Cir. 1994); Pan Am. World Airways, Inc. v. Int'l Bhd. of Teamsters, 894 F.2d 36, 40 n.3 (2d Cir. 1990); Alexander v. Evans, 88-CV-5309, 1993 U.S. Dist. LEXIS 14560, 1993 WL 427409, at *18 n.8 (S.D.N.Y. Sept. 30, 1993). Two things follow: First, that a party that did not object has even less right, if any, to present such evidence. And, second, there is no right when the motion ruled upon was a motion to dismiss.

Minton v. N.A.S.D., Inc., 336 F.3d 1373 (Fed. Cir. 2003) ("A whereby clause in a method claim is not given weight when it simply expresses the intended result of a process step positively recited"). See also, e.g., Lockheed Martin Corp. v. Space Systems/Loral Inc., 324 F.3d 1308, 1319 (Fed. Cir. 2003)(where the words following the term "whereby" state a result, they are not considered to be a claim limitation because they add nothing to the patentability or substance of the claim); Texas Instruments, Inc. v. U.S. Int'l Trade Comms'n, 988 F.2d 1165, 1171-1172 (Fed. Cir. 1993)(since the whereby clause only expressed intended results, the Commission was correct in giving the clause "no weight in its infringement analysis"); Israel v. Cresswell, 35 C.C.P.A. 890, 166 F.2d 153, 155-156 (CCPA 1948); King Pharmaceuticals v. Eon Labs, Inc., 593 F. Supp. 2d 501, 512 (EDNY 2009)(finding that a wherein clause, which expressed the result that could be obtained by administering a patient a drug, did not state a condition material to patentability and thus was not a limitation); Regents of University of California v. Micro Therapeutics, Inc., 2007 U.S. Dist. LEXIS 20511, * 54 (N.D.Cal. 2007)(finding that a "so that clause" in an apparatus claim is equivalent to a "whereby clause" in a method claim and does not impose a limitation on the apparatus). Accord, Hoffer v. Microsoft Corp., 405 F.3d 1326, 1329 (Fed. Cir. 2005) (stating that "it is correct that a 'whereby' clause generally states the result of the patented process").

In my earlier brief, I noted that the R & R correctly disregarded the language of the "wherein clause" when construing my patent claims. In its response, the defendant chides me for not having cited any authority in support of that proposition and implicitly suggests there is none. (Resp. at 8). As the above citations amply prove, the defendant is mistaken.

It is only when a whereby clause "recites a capability that . . . [is] 'an integral part of the invention'" that it will be considered an actual limitation. Digital Technology Licensing, supra at * 11.4 Here, it would be absurd to suggest that the wherein clauses are a patentable element of my invention. After all, the interactions that take place between service-providers and service-seekers after the LOE's transmission of a lead are simply not the stuff of inventions.

Accordingly, it categorically asserts, without foundation, at page 8 of its Response that certain claim charts "admit that . . . [the wherein clauses in this case] were required by the Patent Examiner to overcome cited prior art." (Resp. at 8). The claim charts to which defendant is referring do no such thing.

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4 Defendant would appear to be attempting to shoehorn itself into the narrow class of cases in which a whereby clause is regarded "as an essential feature of the invention if it is used to distinguish the invention over the prior art . . .". Eltech Sys. v. PPG Indus. Inc., 710 F.Supp. 622, 633 (W.D.La. 1988). aff'd 903 F.2d 805 (Fed. Cir. 1990).

In any event, as I understand the law, it my understanding and averments and not those of the patent examiner that count. See, e.g., Digital Licensing Tech., LLC v. Cingular Wireless, LLC, 2007 U.S. Dist. LEXIS 57492, * 14, 12-17 (E.D.Tex. 2007)(where the applicants consistently argued during prosecution of their patent application that an accurate reproduction of the analog signal was what distinguished their invention from the prior art, a whereby clause requiring such reproduction would be deemed a limitation on their claims); Papyrus Tech. Corp. v. N.Y.S.E., Inc., 581 F. Supp. 2d 502, 539-541(SDNY 2008)(where plaintiff repeatedly claimed that what distinguished its invention from the prior art was the fact that the execution of a cross-trade was consummated upon a transmission to a remote computer, a whereby clause providing for such a transmission would be construed as a limitation). I have certainly never understood the wherein clauses in my patent to have played any role vis-à-vis prior art.

They not only don't mention prior art at all in this connection, they in no way indicate that the patent examiner in this case inserted the wherein clauses in my claims in order to distinguish my invention from earlier ones.

They have been the fabric of everyday life for centuries. Put another way, the service transactions and transaction fees referred to in the wherein clause are no more a part of my invention than the "grinding" and "finishing processes" were part of Univis' invention, or activities undertaken in "connecting a microprocessor or chipset to buses or memory" were part of Intel's invention. Quanta Computer, Inc. v. LG Electronics, Inc., 128 S.Ct. 2109, 2119 - 2121 (2008). In each instance, the Court recognized that "[t]he essential or inventive feature" of the patent was embodied in the initial processes or product. The "finishing process" in each instance - grinding and polishing in the case of Univis, and assembly and connection in the case of Quanta - was one that involved the performance of routine functions or addition of standard parts, and not "creative or inventive decisions." Id. at 2119 - 2120.

The only conclusion to which one can come in this case is that the wherein clauses in my patent were drafted so as to conform to the practice approved in Israel v. Cresswell, 166 F.2d 153 (CCPA 1948). There, the Court said:

> In this case, as is presumed to be true in all cases in which the claims have a whereby clause, the clause states the result. The result, of course, is not patentable and when stated it adds nothing to the patentability of a claim. It does not detract from a claim, however, to express the result in proper phraseology and it is not objectionable. Id. at , 155-156 (emphasis added). Here, having used "the proper phraseology" - i.e., having used a linguistic formulation that has long been recognized as signifying that the words following

it do not constitute a limitation or additional "step" - the PTO and applicant were entitled to have that decision honored.

* * *

To sum up: As I demonstrated in Point I of my earlier brief, my patent claims satisfy BMC's requirements. In other words, they were so drafted as to capture the activities of only one party, the Lead Option Engine. As a consequence, they do not require that users or service providers perform any of the steps that are claimed.

It further follows that I have stated a valid claim for direct "use" infringement, which is both viable and plausible. It is in complete conformity with Form 18 and McZeal. It satisfies BMC.

It even satisfies Iqbal and Twombly.5 I have also stated other valid direct infringement claims and valid claims for contributory and indirect infringement. (Obj. at Points III and IV).

CONCLUSION: Since it is apparent that an amendment would not be futile in this case, the Court should reject the Magistrate's Recommendation, deny defendant's motion to dismiss and permit me to amend.

Dated: New York, New York
October 8, 2009

_____

Roger M. Desenberg
Plaintiff

5 I note this notwithstanding the fact that Iqbal and Twombly do not apply. (Obj. at 16-20).

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ROGER MARX DESENBERG,
Plaintiff,

v.

CIVIL ACTION: 08 CIV 10121
NOTICE OF APPEAL

GOOGLE, INC.,
Defendant.

February 2, 2010

PLAINTIFF'S NOTICE OF APPEAL

Notice is hereby given that ROGER MARX DESENBERG in the above named case hereby appeal to the United States Court of Appeals for the Federal Circuit from the DISMISSAL from Judge Daniels of the Southern District of New York who entered this action on January 11, 2010.

Under penalties of perjury, the Inventor, Roger Marx Desenberg, hereby certifies and swears and affirms that

(i) Inventor has the authority to file this pleading; and

(ii) the information provided herein is accurate; and

(iii) all the information contained herein is believed by the Inventor to be true and correct, and

(ii) wherein if there is an error in the information above, that such error is insignificant.

Dated _____

Plaintiff/Inventor Roger Marx Desenberg

By:

Roger Marx Desenberg (pro-se filing)
200 Central Park South
16K
New York, NY 10019
1-718-701-4977
roger@desenberg.com

1. Have you ever had another case in this court?

No.

2. Did the trial court incorrectly decide or fail to take into account any facts?

If so, what facts? (refer to paragraph 7)

Failed to apply the laws for preliminary injunction,

Failed to apply the laws for irreparable harm

Failed to apply the Twombly standard correctly.

Failed to apply that if a company's entire existence and revenue is predicated on the use of an infringing technology

Failed to apply my constitutional right of exclusion, Article 1, Section 8:

Failed to apply my constituional right to represent myself

Failed to apply halting changing status quo.

For a preliminary injunction, the following four factor test can be used:

(i) Is there likelihood on the merits? According to the facts provided, which are to be taken as true, is the Plaintiff likely to win this case?

Never before the Internet was infringement on a technology so easy to determine. Before the Internet, determinining infringement involved discovery and submitting documents and perhaps systems and other things. With the Internet, any Judge, officer of the Court, or any layman can access the USPTO web site, access claim 1 of the Plaintiff's patent, log into the Defendant's systems, and compare the Defendant's systems to claim 1 of Plaintiff's patent to determine infringement. Never in US Patent case history, has infringement been so easy and quick to determine, and so accessible. What used to take weeks and months in traditional paradigms, with today's Internet, infringement can be determined by anyone with access to a computer with an an Internet connection, 24 hours a day, seven days a week.

The only issue is ordering the Defendant to make available for testing the Defendant's version of their AdWords and AdSense systems that were used

prior to the filing of this patent infringement case.

In this respect it can be reasonably argued that never before in any case in US patent infringement history, has there been an quicker path to determine likelihood on the merits. This process to determine infringement only takes a few minutes.

(ii) Is the Plaintiff suffereing irreparable harm?

It can be reasonably argued the Plaintiff has suffered more commercial irreparable harm than any Plaintiff in US patent infringement case history: Plaintiff has been unable to effectivly compete in the Internet industry during it's intial phases of development which is directly due to the Defendant's infringement of Plaintiff's patent. The lost opportunity is calculated to be worth billions of dollars.

(iii) Never before in US Patent case history has there been such a huge imbalance of hardships between the Plaintiff and the Defendant.

(iv) Considering the large amount of anti-trust violating commercial behavior that would be removed from a preliminary injunction where the Plaintiff resells database keys to the Defendant, the public interest would be affected benefically more than any preliminary injunction in US patent case history.

In sum, this case has the strongest grounds for a preliminary imjunction and relief of irreparable harm than any other patent infringement case in US history.

3. Did the trial court apply the wrong law?

If so, what law should be applied?

Failed to apply the laws for preliminary injunction,

Failed to apply the laws for irreparable harm

Failed to apply the Twombly standard correctly.

Failed to apply that if a company's entire existence and revenue is

predicated on the use of an infringing technology

Failed to apply my constitutional right of exclusion, Article 1, Section 8:

Failed to apply my constituional right to represent myself

Failed to apply changing status quo.

The Twombly standard was applied incorrectly.

The standard required to satisfactorily state a claim was applied incorrectly.

CONSTITUTIONAL QUESTIONS

1) Pro Se Plaintiff is Pro Se, not by choice, but because of the Defendant's infringement, and has a right to be treated fairly in the district courts. SDNY has reacted that since the Pro Se plaintiff has not hired an attorney to represent him completely, that the Pro Se Plaintiff does not have a right to litigation. Judge Peck wrote on his order about requiring an attorney, and Pro Se Plaintiff did hire an attorney to artfully write the needed answers to the Defendant's motion to dismiss, but the SDNY ignored these arguments because the Plaintiff didn't have the funds to hire the attorney to represent him for the remainder of the case. The Plaintiff only had enough funds to partially pay for the arguments provided. It is clear that the Plaintiff did not write such arguments, as they are artfully crafted by an attorney, and has the experience and expertise to litigate this case and now guides the Plaintiff so he will not make large procedureal and legal errors during the remainder of the litigation. Since Plaintiff does not have enough funds to hire the attorny to represent him the SDNY clearly is not permitting the Pro Se Plaintiff to litigate because he is not an attorney and is not abiding by the requirement that the Court not hold Pro Se Plaintiff to the same standards as an attorney.

4. Did the trial court fail to consider important grounds for relief?
If so, what grounds?

Past patent law and policy has dictated that a preliminary injunction is

the preferred method of providing relief to the Plaintiff. But since the Plaintiff's invention generates so much revenue, in the amount of $15 billion per year for the Defendant, and the Court, or anyone else, has a hard time believing the truth, that it is the Plaintiff's patented technology that is generating the revenue, and not the Defendant's search engine, nor their other technolgies, nor their sales force, granting such preliminary injunction may be difficult for the Court.

If this is the case, if the Court recognizes that irreparable harm should be granted some kind of relief, and that a preliminary injunction is too difficult a decision for the Court to decide at this time based on the evidence, the Plaintiff maintains that some kind of relief should still be granted. The philosophy and idea that because the Plaintiff's invention generates a huge sum of money, and that the Defendant has been enjoying such revenue from their infringement for so long, a period of ten years, that the Defendant should be able to keep on infringing without paying any immediate relief, is unconstitutional and not reasonable, and hence if the Court is more comfortable deciding on another form of relief as specified above, or a different kind of relief that is easier for the Court to decide, the Court should in fact grant SOME kind of relief immediately. The Defendant has not produced any prior art, and the Defendant does not possess any patent with an earlier date than that of of the Plaintiff.

Google is not like Microsoft or IBM. IBM and Microsoft each earns money on thousands of differnet patented inventions and services. Google earns all of its money by infringing on one technology. This one technolgy has provided them funding to enter in many of the Internet markets such as YouTube and the copying of books and creating geographical mapping systems. With the money Google obtained by infringing on my copyrighted and patented technology, Google was able to win in the Video web site marketplace in 2005 by buying the most popular video web site for $500 million. Google obtained the $500 million from revenue generated from Patent 732 technology. Google then purchase YouTube.

That is commercial irreparable harm. In 2004, about ten months before

YouTube sold, Plaintiff sold my office building, and put in a paltry $125,000 into developing a video distribution site, because Plaintiff forecasted the timing was correct. But without my money from Plaintiff's first invention, Plaintiff could not compete effectively and win against Google, who had all of Plaintiff's money. That's irreparable harm. YouTube is now a name known around the world as the first popular global video distribution site. No one has every heard of VideoStation7, Plaintiff's unfinished website.

IRREPARABLE HARM

Considering that this case is extraodinary, never before in the history of the United States, has an inventor invented a completely discrete system that generated revenue in an amount of 0.2% of the GDP, and controls 3.5% of the GDP in commercial transactions, and had such invention infringed by a competitor whose only large source of revenue is from such invention;

and where the four factor of irreparable harm are clearly met;

it is appropriate to consider relief for the Plaintiff/inventor using a paradigm that is not an all or nothing paradigm like the preliminary injunction;

and instead use a paradigm of relief which could be a percentage of revenue, or a forced non-infringed sale <use better words>, or simply a one time cash amount, that would remove irreparable harm.

From the Defendant's point of view, to deny them 99% of all of their revenue without a complete trial, with all its appeals, seems unfair.

From the Plaintiff's point of view, to deny some kind of relief immediatley, after the four factors have been met, seems unfair and especially unfair since the Plaintiff has been seeking to execute exclusivity rights since 1999, over ten years ago. Hence in this case, to remove the irrepreable harm, it seems reasonable that the court should consider a one time fee to be paid to Plaintiff, or a percentage of the monthly invoices.

There is no case in the history of the US which deserve relief more than this one.

Thought it may take considerable genius and intellect to invent the Maximum Price system that generates over $30 billion of revenue per year, and helps the facilitation of over $500 billion of commercial transactions, ascertaining infringement is a straightforward process that most Internet users, and judges and juries can complete in a few hours from the privacy of any computer connected to the Intenret, twenty four hours a day, and seven days a week.. And certainly it doesn't take more than 4 to 8 hours, to completely study, to the utmost detail, if itt is likely that the Defendant infringes.

If Plaintiff is not given relief of some kind due to the obvious and clear irreparable harm, given there is clear likelihood on the merits, then the Courts will in fact be leveraging the Federal Civil Procedures to deny Plaintiff's my rights for another long period of time, after Plaintiff has already waited for 11 years. (see Exhibit Leveraging Federal Civil Procedures)

Hence, given that Plaintiff's patented technology is completely discrete and not cumulative, considering it was copyrighted and patented, and considering the Defendant never generated any windfall revenue until they infringed in the fall of 2000, and considering no one else in the world claims to have invented Google AdWords, including all the engineers at Google, and that the inventor of such system has never been mentioned in their book "Google Speaks" or in any other literature, it is reasonable for Plaintiff to ask, and receive some kind of relief immediately.

It is of Plaintiff's opinion that Google has been very careful not to claim they invented the system because copyright infringement can be a criminal offense.

Without immediate relief my right to the pursuit of happiness is being denied.

---------- start from section 1

Liklichood of success

Failed to acknowleged Defendant did not present any patent for the

technology they use to run their entire business.

Failed to recognize that in comparing the Defendant's AdWords system to the Plaintiff's Claim 1 of Patent 732 and compared to Plaintiff's original invention, there are several factors that are exactly the same:

Maximum Price

Lead / Ad contact information

Lead Limit

Real Time price being calculated in the same exact way "one penny more...." Defendant

"one penny more"... Plaintiff

COMMERCIAL IRREPARABLE HARM

Right to hearings, proceedings regarding relief based on the fact everything Plaintiff says is to be taken as true

I claimed I had experienced commercial irreparable harm.

Because of the Court's refusal to investigate my claims of irreparable harm and status quo changes, I was never afforded the opportunity to show the Court that I have approximately 200 domain name, and several of which have been used as web sites to contain sophisticated web technology that COULD have been sucessful given enough marketing resources and other resources that I would have had, if the willful infringement had not occured, this included sites in various web techologies, including, but not limited to: a video distribution web site, a classified ad web site architecture, a new kind of search engine, a micro payment micro investing and micro donating system ..... to list a few. And there was no inquiry into substantiating whether or not I was in fact due relief from irreparable harm as I had claimed when

In fact, it is reasoanble to argue that I have suffered the most irreparable harm in US Patent Infringement case history, because when the Internet changed economies, I was not able to participate competitively in many kinds of new web sites that were flourishing in the dawn of a new era, the Internet era. And

now many competing web sites are household names, while I missed out on those opportunies, like YouTube - I had a video distribution site that no one knows because of the irreparable harm, Air Bed and Breakfast - I had predicted the huge Internet rental real estate market that would flourish where people would rent their homes and vacations houses easily on the Internet. and I predicted this years ago, and in fact reserved a domain name, RentMarket7.com in <2004????>. Now it's too late to become the first well known rent your home while you are away web site. Now it's too late to be one of the first well known video distribution web sites. It's too late to become the first well known web site in several markets, but there are still a few markets and web sites, which have yet to be deployed by competitors, and if I can get the relief due me in this case, I will have an opportunity to be competitive in these new flourishing Internet markets.

Incorrect in their conclusion I had Failed to state a claim

Failed to recognize there is no ambiguity in the statements that state a claim.

Where other cases have been dismissed for failing to state a claim there is almost always ambiguity, or incorrect facts, or incompleteness. But in the complaint there is no ambiguity here, and nothing is missing:

(i) Defendant's exact web pages that infringe are identified.

(ii) Exact amout of damages are specifed

(iii) Nature of complaint, patent infringement, is specified

There are no grounds for "failing to state a claim".

The Court failed to recognize that 99% of the Defendant's revenue is from the willful infringement of Plaintiff's invention which is unlike the revenue stream of other large technology companies like Microsoft and IBM which have revenue from thousands of different patented technologies: Google's only windfall revenue stream is from one discrete patented technology: Patent 732

Technology.

Failed to recognize that Defendant had the resources to develop mapping systems, such as maps.google.com, Google Earth, Google Video, Google's Gmail system, and everything else they do, and have only been able to do so by infringing on Plaintiff's patent. It follows, that it is obvious that in the event the Plaintiff was able to earn revenue from his invention that the Plaintiff would have been able to compete in the many new Internet businesses that are flourishing every year. And in fact, where the

These facts were not included, because the Court refused to recognize the four factors were met, and that the likleihood of infringement is so strong, that further investigation for relief was warranted, but denied by the Court.

5. Are there other reasons why the trial court's decision was wrong?

If so, what reasons?

My patent and invention was never compared to any Google patents, nor their AdWords or AdSense throughout the litigation of this case, which is the reason the case was filed..

Google, after nine years, NEVER changed their software, and only changed it and removed the word "Maximum", after Plaintiff filed the patent infringement suit. That's obviously because they want to hide infringement. Plaintiff attempted to have status quo NOT change during the pendency of the case, and the SDNY said no.

In this Patent 732 infringement case, the exact web pages, and the exact functions and software systems were identified without having to rely on discovery. There is no amibiguity about what and where the Defendant infringes on Patent 732. Patent infringement cases do not get dismissed on account for failure to state a claim unless there is ambiguity or something critical is missing or incorrect. Hence, for this case dimissing on the grounds of failure to state a claim for this case is clearly unreasonable: there is no ambiguity and all factors for competently stating a claim have been fulfilled and facts are correct and

have not been proven false. Damages and a plain statement of the nature of the complaint is clearly stated: there is patent infringement, in AdWords, on the specified web pages provided, and the damages are at minimum is $10 billion.

Inventors and geniuses are prone to see the truth and speak the truth. This is the same characteristic that helps inventors invent new things and see "outside the box" and see things no one else sees. I have the right to participate in this trial Pro Se, and to represent myself, and to provide the truth to matters. I have the right, as a Pro Se litigant, to not be held to the same standards as attorneys. I have the right to be human, and be emotional, expecially considering what I have experienced and the tremendous amount of dollars involved, and the fact this infringement case has left me broke and unable to focus on anything until this case has been fully decided with all of its appeals, and that this infringement matter has been occuring for over ten years.

The Court is violating my constitutional rights to dismiss the case bassed on the assumption the Court does not want to "deal with me" because I am a Pro Se litigant, and especially so, because being a Pro Se litigant is not my choice, but the direct result of the Defendant's continued infringement of Patent 732 technology without any kind of relief.

The law says if, because of infringement, and therefore Plaintiff cannot be in a financial position to properly litigate, and Plaintiff loses the case, that the harm of losing the case would be irreparable, and therefore preliminary relief should be granted, yet this law was ignored.

The focus in such a situation should be on fairness, and not on other things.

The Court failed to recognize or investigate the real situation about public interest - without a regulator in this industry, there is rampant "AT-VCB" (Anti-Trust Violating Commercial Behavior), and the American public is hurt by such AT-VCB, and the Defendant has been identified in many publications of such AT-VCB including "The Economist" a magazine, a copy of such article is enclosed in the case documents.

Plaintiff's intentions from 1999, and will be, until the patent expires, is to leverage the patent to regulate the marketplace, and prevent fraud, and further. this example can show almost all Internet patents should be leveraged.

Patent 732 technology is the stuff inventions and discoveries are made of, and the Court has ignored this fact.

6. What action do you want the court to take in this case?

1) Investigate the Likelihood of winning the case on the merits either by

(i) accepting the facts in the Complaint as being true or

(ii) ordering the Defendant to deploy its older versions of the infringing software that was used between November 21, 2006, the date Patent 732 issued, and November 21, 2008, the date the complaint was filed, to enable the Court and Plaintiff to test those versions and comment, where Plaintiff shall ensure the versions are the same that were in use during that time; and

enable the Court to compare Defendant's old versions with Claim 1 of Patent 732 to determine likeihood of Plaintiff's chances of having this case decided in Plaintiff's favor.

2) Investiagate if relief is due, and order or recommend what kind and how much.

3) Investigate the issue of Status Quo - will Defendant be allowed to change status quo at any time for any reason during the course of the litigation?

4) Reverse Dismissal

(i) verify the Complaint has satisfactorily stated a claim; and

(ii) verify that Claim 1 of Patent 732 are valid and well drafted.

Due to this case being extraordinary, and the only one of its kind in history of patent infringement Plaintiff requests this appeals court either:

(i) order the Defendant to provide a definitive amount of relief to the

Plaintiff; or at least

(ii) provide guidance to the SDNY of how to proceed to determine an amount of relief to be provided to Plaintiff.

7. Do you want to argue before the court in person?
If yes, what are the reasons why argument will aid the court?

Finding, seeing, and feeling the truth is often evident when speaking and listening and feeling the presence of a person in a room. I feel if I speak in front of the 2nd District I can answer their questions, and present the truth in a way that the Court will be able to quickly determine if I am telling the truth and the whole truth.

END OF QUESITON SET

BEGINNING OF EXHIBITS

EXHIBIT 1

DISCRETE VS CUMULATIVE

Google's search engine ran fine before they infringed on Plaintiff's copyrighted software and patented technology.

By patented technology is not cumulative but a discrete stand alone technology that does not need to run along side a search engine. My first implementation is not used with a search engine, but is a lead/ad generation system wherein the user requests leads and ads that can be run alone or interfaced to any web site. Google, not making any windfall revenue, interfaced my invented technology to their search engine to generate such windfall revenue.

The world could still use Google's search engine without using my patented technology. Google's revenue would drop by 99%, but their seach engine would still work. And Google could use other advertising technologies instead of infringing on my technology. They could use banner advertising, and other types of advertising. Patent 732 technology is not required, technically or otherwise, for Google's search engine to operate. AdWords and AdSense are completely discrete systems. Google has licensed the AdWords systems to other websites, selling the copyrighted and patented technology as their own.

The patented technology protected by patent 732 is a complete stand alone system, and is not cumulative in any way with Google's search engine. Google's search engine takes the keywords entered and sends that data to two discrete systems. Not three discrete systems, and not one discrete system, but exactly two discrete systems. The first system is their search engine, and the second system is Maximum Price Real Time Pricing Lead/Ad Generation system, my patented and uniquely invented technology.

HARD TO BELIEVE

The only thing Google did to earn their windfall revenue was to add

Patent 732 technology to their high traffic systems. That's the amazing thing about Patent 732 technology. Add it to any high traffic web site, and it generates windfall revenues. Google did not provide any salesmen to close their sales, they only provided the infringing technology.

Google did not provide any real estate property to close sales, they only provided the infringing technology.

Google did not provide any delivery trucks to close sales, they only provided the infringing technology.

Google did not provide any manufacturing to close sales, they only provided the infringing technology.

Google did not provide any employees to speak to customers to close sales. they only provided the infringing technology.

Google did not provide anything found in traditional businesses to close sales, they only provided the infringing technology.

Plaintiff's invention is DISCRETE, and not cumulative.

Plaintiff's technology is not required to work with a search engine. it can work on any website.

And in fact the way Google interfaces Patent 732 technology with their search engine causes a great deal of anti-trust violating commecial behavior. Plaintiff's original implementation was not used or interfaced with a search engine. A search engine is NOT required to be used with the Invention. This is extremely critical to understand.

Plaintiff said, "I invented a completely discrete invention, the Maximum Price Real Time Pricing Lead Option Generation engine in 1999. I finished developing the first implementation of the system in July of 1999, and I predicted then, that this system would earn billions because it is the answer and best solution in creating a trusted global service and labor marketplace on the Internet if its regulated and controlled by a qualified expert, such as me.

END OF EXHIBIT 1

EXHIBIT 2

BACKGROUND EMOTIONS AND STORY

During 1997 and 1998 all the marketing in the world could not get Yahoo's deceptive search engine to keep being used. They had the entire world. Yahoo's search engine WAS number one. But they deprecated it by replacing what people wanted to find with vendors paying for ads. The system eventually failed. It didn't fail because the sales people were not selling, like in traditional business, because there are no sales people! There is just the technology. Even with thier muscle and millions of dollars of money, people were being turned off by their system. Google stepped in and removed all of the advertising from the search results, kept data on what kinds of searching people wanted, and prevented "surprise pornography" by maintaining and connecting to lists of sites that were pornography by surprise. Thus Internet users found what they were looking for, somewhat. Really, all Google did was get search back to how it was working before Yahoo and pornographers abused the Yahoo search to the point of not working at all. Yahoo stopped working because they did mixed in paid advertising directly to their search results. The only other additional thing Google did to improve on Yahoo's search, was keep data on what people clicked on, and used that in their search listings. And of course, since they didn't have advertising or lead strategy. they were not making windfall profits. They obtained an audience, but they were not generating windfall revenue. At the time, banner advertising was being used, but they had a difficult time incorporating that into their site. Which ad would come up when? How would the pricing work? With bids? People could not bid in real time for ads, the ads had to be delivered instantly. Google wanted more revenue.

At the time I decided to enter the web race. I wanted to create

something that generated revenue, yet offered a very needed service with high value to the Internet. I decided to go after the service market. Like painters, attorneys, construction workers, anything that was a service. I wanted to create a site that was a marketplace for services. If a customer wanted a service, or labor, they could go to my marketplace and find the service. At the time, there were no other sites that was a marketplace for services that worked. Several startups decided to do the same thing in 1999.

The domain name I chose on January 5, 1999 was called ProjectWork.com, which I ordered through Network Solutions on that day. A couple of weeks later the domain name was registered to me. In deciding to do services, unlike some software engineers, I didn't want to create a new paradigm of how people found a service. I wanted to create a system where people used the Internet as a tool do find services in the same traditional way they have been for years. All of my competitors failed to create a system that worked. Elance.com, for example, obtained over $20 million in investment, but their system failed. What most of the competitors did was take listings of project profiles from customers, and vendors would offer an estimated price or fixed price to do the work, online. The competitors were trying to control the entire process of choosing the service. And then the competitors web sites architecture was designed to charge a fee that was a percentage of the job. Or they would have a subsrciption for customers and vendors. The problem was, this was not how business had been done for thousands of years concerning services. A customer did not choose a service based on price alone, like a product. If a customer is going to purchase a Spalding Basketball Model XYZ, and the cost is $20 from one vendor and $18 from another, usually the customer will choose the less expensive one. But when it comes to remodeling the kitchen, if one vendor quotes a price of $2000, and another quotes $4500, and another quotes $5500, and another quotes $6000, the customer will probably NOT choose the least expensive one, because a service IS NOT A COMMODITY like a product. There is a large difference in quality, and speed to completion, and the possiblity of over charges. Clearly I didn't

want my marketplace suggesting that customers choose a service based on estimated cost of the project.

So I studied how choosing a vendor of services was accomplished. The process has not changes in hundreds of years:

1) Customer contacts several vendors, perhaps three to five

2) customer obtains quotes and communicates with each vendor

3) based on the combination of (i) quality (ii) speed to completion and (iii) cost, the cusotmer would choose a vendor. RARELY would customers choose the least expensive vendor, as usually the least expensive would produce poor quality, or mis-quote, or was not trusted. Most of the time, customers would choose a vendor that was not the most expensive nor the least expensive, but somewhere in between. But luxury customers who wanted the best would choose the most expensive, and sometimes customers who had very little money to spend would choose the least expensive. In my opinion, at the time, and now, a successful marketplace would not choose the vendor for the customer. The customer would make their own choice.

In my thought experiment I imagined 100 painters who wanted to paint houses. And there was one customer. And the customer didn't want to communicate to all 100 painters - the customer didn't have enough time. And vendors, likewise, would be not be interested in providing quotes to a cusotmer who already a lot of quotes from many other painters. So the number of painters who were to communicate with the customer had to be limited. Traditionally, a customer would speak with three to seven painters. And from there, the customer would listen to their sales pitch, perhaps get references, and an estimate for the work, and then finally choose a provider. Which of the hundred painters should be presented? And how many service providers should be provided? I did extensive mathamatical calulations, since I studied math and computer science and economics at Emory U, I had the background, to decide how many vendors should be displayed per service contract based on several criteria. Depending on the work, sometimes the limit should be 3, and other times 10. The way most

computer systems worked at the time was through bidding, like an auction.

So applying a bid strategy to select vendors to display as a lead to a customer, with the bid system each one of the painters would bid for a lead. And if a painter was busy with enough work, they would bid zero or not even want the lead. And the painters that needed the work would bid more. And, according to the bid system, each painter would be emailed the highest bids, and then they would bid again, and again, until a time was reached, and then the highest three or five bidders would obtain the lead. Sounds good on paper, but for my thought experiment this system would not work at all. Painters would have to bid 5 to 10 to maybe 30 times for one lead! Painters don't have time for that! They want several leads, not just one, and they don't have the time to do all this bidding. Bidding, obviously, didn't work. To obtain 10 leads would require bidding, perhaps 100 times! I already didn't like the auction process to pay for common items, it took too long, and it was more of a game, than ecommerce. So in my thought experiment, I tried to come up with a question or two I could ask each painter, and then leave them alone for the week, and then my system would come with leads, and a price for each one that was fair. Thus each price for a lead had to reflect the "real value" of the lead otherwise customers would not return again for more business to buy more leads.I tried several scenarios.

(i) I could ask each painter how much would they like to pay for lead to a small paint job, a medium sized paint job, and large paint job.

(ii) I could ask each painter, how much would you like to spend for 10 leads?

(iii) How much do you think a lead is worth?

(iv) Or I could do calculations and try to come up with a price based on how much money they were paying for leads already, and compare their advertising costs in the Yellow pages or other advertising.

(iv) Then finally, I came up the solution, which I didn't know was the solution at first: What is the maximum price you are willing to pay for a lead? And then I would say, you won't pay that price all the time, and you may never

pay that price, you might always pay lower, because you will pay a market price, even though I didn't know how I would figure out a market price, yet.

So two questions:

(i) what is the maximum price per lead? and

(ii) how many leads do you want? or what is your budget for leads.

There are three questions there, but only one of the last two is needed. Asking how many leads a person wants, or what their budget is, is the same question mathamatically. Either way it limits their exposure and they won't pay more than they agreed to.

So in my thought experiment i asked them what is the maximum price are they willing to pay, and what is there maximum exposure? Then i would enter this information into my computer, and somehow I still had to figure out what a "fair market value" is.

In commerce, if prices don't reflect real values, markets fail.

For example, I owned a Mercedes Benz, a very nice 190E with all the options. And it was ten years old, but only had 50,000 miles on it. Not much. A brand new 190E, very similar to my car in condition, and performance, because my 190E was perfect, was priced at $35,000. The "blue book" value on my car was $2500. It didn't make any sense. A low end two year old Ford with 30,000 miles on it, which new was $18,000 was priced at $10,000 in the blue book. The prices didn't make sense. No one would actually believe that the Ford was worth four of the Mercedes. Prices on cars don't make sense today. This is partially why people don't buy cars. Cars are priced unrealistically. Whether this is a symptom or a cause is not relevant for my purposes here. The point is, in failed markets, prices don't reflect real values.

Same with the recent real estate fiasco. Houses and resdiences were valued way beyond their real values. The real estate market eventually failed.

Thus I knew, for my marketplace to work, I had to come up with a fair market price for the leads. Initally I thought that most painters, and it would be the same for most industries, that the most they would want to pay for a set of

leads would be about 10% of the cost of a paint job. So if a painter paid $10,000 for a set of leads, and obtained a $100,000 paint job, they would continue to do business. And I figured in some circumstances it might be as high as 15%. But this was the maximum a painter should pay. On average the painter might pay 7%. And I knew then, that evil programmers could force the painters to pay an even higher price, where eventually all the profit on the paint job went to the lead marketplace, with nothing left for the painter. So I knew then, there would probably have to be some kind of regulation. But I still needed a fair market value fro the lead. So in my thought expeiment I created an example, and I had one painter's maximum price was $10, another $9, then $8, $7, $6, and the rest were $5 and under. So I had:

$10 / $9 / $8 / $7 / $6 / and the rest were under $5.

Then, for this specified sized project, I calculated based on several criteria, that the most leads a customer would want is five leads, and the same for the vendors. The vendors would be interested a lot less at the point where more than five leads were being given to a single customer. I did economic and statistical analysis on the example. The respective lead value would begin to drop at an accelerated pace after five leads for this sized paint job. So in this scenrio it was easy to determine who would get the lead: the five painters with the five highest maximum prices. But how much would each one pay for the lead? There are an infinte number of forumalas, and I needed a good formula for the first version. I wanted the formula to be simple, yet produce a fair market value. I deduced that all of the five vendors were getting the same lead, and thus were all getting approximately the same value. The leads would be listed, and it seemed reasonable that the vendor with the $10 max price would be listed first on the computer screen, and the vendor with the $6 max price would be listed last. So possibly the vendor with the $10 max price might pay a little more than the others, and possible the vendor with the $6 max price would pay the least. I needed a "strike price" to start with. I thought about taking the median price of all the 100 vendors. I thought about adding the lowest max price who obtained

a lead with the highest max price, and divide by two ($10 + $6) / 2 = $8. But that would be more than the max price of the the $6 one and the $7 one. That didn't work. So to keep things simple, I settled on the $6 price. All the vendors obtaining the lead had agreed to pay at least $6. And then, to give value to the order being listed, I decided to add 1 cent to the strike price of $6. So the prices paid for the lead would be $6.00, $6.01, $6.02, $6.03, $6.04.

And then in my thought experiment, using this process, a vendor who spoke to me one time and agreed to pay a maximum price of $10 might pay $6.04 for one lead, and then $6.52 for another, and $5.53 for another, $9.40 for another! Amazing! I had a marketplace with a real time pricing mechanism! And the painter only had to enter in ONE maximum price, without repeated bidding!

I knew that there could be an infinte number of forumals to create the strike price, so in the claims if the lead price is between zero and the maximum price, the system or method infringes.

Even though patents were new to me then, I had some intuition that I didn't want to claim too much and be too broad, so I limited my claims to services. But in fact, the Defendant earns about 80% or more of their revenue from the service sector.

I called my invention the Lead Option Engine, because I thought the contract was similar to a stock option. And I called the process the Maximum Price System with a Real Time Pricing Mechanism.

None of my competitors came up with an invention like this. Only me. I was excited enough about my new invention to invest everything I had into it, all of my money, time, effort, labor, everything. I thought this was it, and I was right.

Security $2k in bank vs $100k lead
Like the fed reserve. <SEARCH FOR THIS!!!>

After working on this service and labor marketplace for several weeks,

I realized the entire marketplace centered around the lead. After the leads were communicated, vendors and customers could do communicate and do business on their own. From there I was planning on adding escrow services and project management, and background checks, and provide these services by partnering with third parties. But none of those things are inventions. The invention was the Maximum Price Lead Generation System that used a Real Time Pricing mechanism. I had the design completed in March, and it still took another four months of hard work and 18 hour days to finish building ProjectWork.com. And extensive database archiecture was built, and lots of code.

Google made some changes to my original invention which causes anti-trust violating commercial behavior "AT_CVCB":

Removed registration requirement from customers

Interfaced and pump search keywords into lead generation system without asking or adquately identifying if a lead was being sought, thereby requiring vendors to pay for worthless leads.

They only had some vendors pay for leads, which is part of their "pay per click", which promotes more AT-VGB

Google actaully made the invention worse, less efficient, enabling AV-VCB, but the technology still worked better than anything else on the Internet. Vendors kept coming back because of the real time price mechanism. And in fact the Defendant's description of their system is exactly the same as Patent 732 technology in most respects, including the extra penny. See complaint.

Funny how no one at Google claims to have invented it, only me. No one else. In their book, Google Speaks, there is no mention of who invented this amazing system.

Do you believe I invented it now?

Do you believe that the reasons Google made so much money is NOT because of thier search engine, its because of my patented technology?

Next Question: If the patented technology is so amazing, how come the inventor was unable to generate revenue from it over the past 10 years?

If he was not able to generate any revenue from this invention does that show the inventor is incapable of doing Internet business?

Even though this question is not to be considered on legal grounds, because it doesn't matter according to patent law, this question will certainly be thought about by some people, including some judges, when trying to decide what is "fair and just" in deciding how to handle this case.

It's a fair question. Why have I not been able to produce any income from this invention over ten years? And does that show that Google is needed to earn money from this invention? And does that mean that in fact the invention is not so discrete, but more cumulative than the inventor claims? These are fair questions.

And here are the answers:

I am probably the only person in the US that has the expertise to regulate this process, and I am definitely the only person in the US that has the legal rights to regulate this process and to regulate the Defendant's AT-VCB through the leverage of my patent rights.

Here is the irony:

In 1999 when the Internet bubble was being created, there was a large number of venture capitilists and a large number of information technology professionals who were trying to capitilize on the public's excitement about the Internet by creating a web site that generated revenue, without regard to profits, and without regard to building a profitable business. Their goal was to generate revenue, even if the web site based business could never actually create profits, and show the revenue on paper, and then to execute an initial public offering to the public, sell shares, earn money from the offering, and then watch the company fail, because profits were never planned or impossible.

Unfortunately I wasn't "chosen" by any of the VC I had contacted, probably due to the fact my plans included a real business, using my Lead Option Engine, the patented techology that Google now infringes on. My business plan called for earning real profits in three years. What I didn't know

was that my amazing technology would actually earn real profits in months and not years. And I was not interested in generated revenues, false hopes, and doing an initial public offering to add to the bubble. This attitude didn't impress investors. Then the 2000 tech crash occurred, and investment slowed into Internet technology.

To make an invention, especially creating one in the Internet economic and emarketplace space that will work in the long term, it takes creating a system with a solid foundation, one with integrity, a system that people will trust. At the time, because the Internet was so new in 1999, it was much more simple to create a system that was a "flash in the pan" to attract users, to generate some revenue, than to actually create an emarketplace that would generate billions. It is intersting to think about the type of character of an inventor that would develop something that actually works in the long term in the new Internet Economy. I claim that such an inventor must have integrity and character beyond that of average inventors, and that such an inventor would have to have had the mindset of trying to create a solution to a real problem, and a solution to fill a real demand. Where other programmers were focused on created a system to "make them rich", I was focused on creating a system that would really work in the long term that would really supply a needed demand, and do so for the American people and the world; I was focused on creating a system for the customers and the vendors: I was not focused on creating something that capitilized on people's excitement about the Internet to create a get rich quick scheme.

And of course, this is how great inventions are usually invented: trying to create something useful for humanity. The irony is that the get rich quick inventors rarely, if ever, invent and patent something really worthy. The inventors who are not focused on themselves, but rather are focused on helping humanity, or furthing science and knowledge, these are the inventors who create the most worthy and noble and most successful inventions.

But this kind of character is not the kind of character the venture

capitalitst were interested in at the time in 1999. They wanted get rich quick schemes. So it is not surprising that the inventor who created the single highest revenue producing invention on the Internet was not "chosen" by the VC groups and their attorneys.

RULES AND LAWS AND POLICY GOVERNING INVENTIONS IN THE US

If the rules and laws were that anyone can copy and infringe inventions, and those with the most investment were allowed to overpower inventors through gathering more investment than inventors, then it would be OK that Google is infringing on my patent and my copyrighted software.

But I am not a "small inventor" compared to Sergey and Larry, the Google boys. Both me, and them, at the same time, were presenting our business plans to investors. Both my company and Google, at the same time in early 1999, had about 10 employees and about $100k in the bank. They invented a free search engine. I invented the money maker. They were in California, and I was in Atlanta, and they obtained the big investment of $25 million, and I didn't. I was meant to be the next great Internet CEO, and would have been back then in 2002, if my attorneys had worked in my best interests without willful negligence. But I got caught in the tech crash of 2000 when investment into Tech halted, and then by 9/11, and then I had to wait seven years for the patent to issue.

If Google would have used banner advertising, or bid advertising (they use the word "bid" in their software now, and started doing this after I filed this patent infringement case, but really, its still a maximum price), or another kind of advertising or different lead generation technology, they never would have earned so much money. The secret to their money is my technology. There are plenty of good free search engines out there. Why don't they make billions? Because of the Maximum Price lead generation system which cost me 11 years of my life, my family savings of a few million dollars, and a lot of heartache, and almost my sanity. It is time for my suffering to end. It is not time to make

my suffering last because of the unconstitutional leveraging of Federal Civil Procedures which is violating my exclusion rights not being executed in a reasonable amount of time when in fact it only requires a week or a few hours to determine likelihood on the merits by comparing my patent claims with Google AdWords and with my invention at ProjectWork. The Court, delaying such investigation, for the reasons of leveraging and "following" Federal Civil Procedures is an flagrant violation of my constitutional rights.

The biggest reason I am in the position I am in is not because Google "copied" my invention, breaking criminal copyright laws and infringing on my patented technology. The biggest reason is that for whatever reason, fraud, or just bad application processing, the system made me wait 7 years before the issue of the patent and that Court proceedings are inadequate and inappropriate preventing "looking behind the curtain" which only takes a few minutes.

Google didn't use commercial savvy to compete and win against me and my startup, they used infringement of my invention and the fact my patent rights were not yet issued. If my patent would have issued in 2002 to 2003, and my case would have been settled years ago. In some countries... as other countries allow litigation after 30 days of applying for the patent, instead of having to wait for the patent to issue. (such as france)

INVENTION IS AMAZING

I am making the claim that my invention is an amazing invention, and in fact Google never would have generated billions of dollars of revenue with another advertising or another lead generation system. One could argue that my lead/ad generation system is only marginally better than other lead/ad generation systems, and if Google were to have used another system that did not infringe, they still would have generated billions of revenue because they attracted so many customers. I argue that is not true for several reasons including:

1) Yahoo attracted many customers, yet their search engine of 1998 failed,

so this proves that having a lot of users does not guarantee success

2) If my system was only marginally better than others, THEN WHY WOULD GOOGLE RISK THEIR ENTIRE REVENUE BY USING IT? WOULDN'T THEY JUST USE A DIFFERENT SYSTEM to avoid the risk of infringement?

Yet Google decided to use the amazing Maximum Price system even though they know it infringes on my technology. They obviously know they are infringing on my technology because they do not have a patent on the system. Google not having a patent on the Maximum Price Lead Generation system proves Google knows and has known for a long time, they are infringing on another technology not owned by them.

One could argue that Google gathered the audience through their search engine, and therefore they are entitled to the revenue they generated. I argue that is not true.

My original business strategy was to build the system and distribute the system through a reseller or license network. Google operates Patent 732 technology with no license, and with no patent. I was leaving the costs of marketing and gathering audiences to use my system to potential partners and resellers. I focused my investment of time research and development, and investment, into building the technology to generate the revenue, while my business strategy called for other companies to use their marketing powers and other resources to gather audiences and Internet users to participate. Hence, Google, whose greed knows no bounds, used the technology, knowing they did not invent the system, and willfully infringed on my copyrighted and patented technology, and refused to even pay 7%. Not only do they generate billions, Google refuses to pay for the use of technology they didn't invent, and have no patent for, and so in this regard, Google does not deserve any revenue from my technology. Yet, still, even though I have a legal right to exclude the Defendant completely from using the system, I am still willing to collect the 7% plus triple damages through my reseller strategy, wherein they are excluded from

originating leads, but allowed to resell the leads, which in effect, will still enable them to earn 93% of the revenue generated from my discrete invention. But I have my patent now, it's time for the Court to "look behind the curtain".

It appears that I am a "small inventor" fighting a huge corporation, but in fact that view is very skewed. IBM, and Microsoft and other large corporations generate their revenue from hundreds of patented inventions and technologies. Google generates 99% of its revenue from one single patented technology and software system. 99% of all of their revenue comes from my patented technology.

I am a CEO whose entire company has been copied and stolen, not only because Google infringes, but mostly because the attorneys I hired were not working in my best interests and clearly willfully committed negligence in delaying the issue of my patent.

----END OF EXHIBIT 2

EXHIBIT 3

EXTRA EXTRA ORDINARY RELIEF - NOT THE AMOUNT, BUT HOW IT SHOULD BE DONE

Since this case is extraordinary the kind and terms of relief to the obvious and clear irreparable harm that exists that may be appropriate in this case may be different than all other cases to date. Plaintiff requests the Court of the 2nd Federal Circuit to grant such relief or to direct and provide guidelines to the SDNY in what kind and how much relief shall be granted.

Past patent law and policy has dictated that a preliminary injunction is the preferred method of providing relief to the Plaintiff. But since the Plaintiff's invention generates so much revenue, in the amount of $15 billion per year for the Defendant, and the Court, or anyone else, has a hard time believing

the truth, that it is the Plaintiff's patented technology that is generating the revenue, and not the Defendant's search engine, granting such preliminary injunction may be too difficult for the Court. If this is the case, if the Court recognizes that irreparable harm should be granted some kind of relief, and that a preliminary injunction is too difficult a decision for the Court to decide at this time, the Plaintiff maintains that some kind of relief should still be granted. The philosophy and idea that because the Plaintiff's invention generates a huge sum of money, and that the Defendant has been enjoying such revenue from their infringement for so long, a period of ten years, that the Defendant should be able to keep on infringing without paying any immediate relief, is unconstitutional and not reasonable, and hence if the Court is more comfortable deciding on another form of relief as specified above, or a different kind of relief that is easier for the Court to decide, the Court should in fact grant SOME kind of relief immediately. The Defendant has not produced any prior art, and the Defendant does not possess any patent with an earlier date than that of of the Plaintiff.

Court has a duty to think in percentages in not dollars. Because the dollars are large, all thinking and writing should be done on percentages, otherwise the Plaintiff is not being treated fairly. It's the single most extra-ordinary case of its kind that exemplifies the magnitude of intellectual property value in modern times. Thus, when deciding relief, please say %0.001 of revenue, or %5 percent of revenue or %7 percent of revenue.

I am NOT ASKING for GOOGLE to pay me for systems that DO NOT INFRINGE.

But of course, the Defendant claims 99% of their revenue is from their infringing systems, and methods, AdWords, and AdSense, which are completely DISCRETE systems that have nothing to do with the paid vendors. The Google Search Engine operated for three years and had gained HUGE popularity and SUCCESS. But they could not create windfall revenue.

So being the most successful search engine, they obviously know everything on the web. It's there business to know. They should know to create

good value for their customers.

That decided to infringe as a business strategy, with me being their first culprit, and then the books, and our privacy, and everything else we have thrown together in a big heap, that at first seemed great, but it's cracks of lack of secure foundation has grown to huge levels of anti-trust violations, no one knows quite what to do, except me.

The FULL Preliminary Injunction that I recommeneded, will REMOVE a SIGNIFICANT AMOUNT OF THE $3 BILLION A YEAR of Anti-Trust Violating Commercial Behavior that effects an estimated $50 billion of commercial transactions. And the Defendant will STILL EARN 93% percent of the revenue from my invention until the case goes back to District Court, back to Appeals court - because both sides will appeal, and the case will sit, naturally in the Supreme Court for who will have control over my invention. It will be a long, long time before final settlement. I am due relief now.

Public Interest is suffering immensly without the Preliminary Injunction.

The the Defendant who has infringed on my patent for 3 years, and my copyrights for 11 years, and they WILL STILL EARN 93% according to my recommended preliminary injunction.

Here is how a preliminary injunction can work well for all involved:

1) Plaintiff gives out database keys using bank secure database software

2) Defendant must have keys to operate

3) Defendant pays fees for keys and distributes them with each lead

Defendant will resell my keys and is ordered by the Court to not sell any leads without keys.

By the Defendant's own adminission, 99% of their revenue is derived from the Plaintiff's 100% discrete patented technology, the Maximum Price Real Time Pricing mechansim.

Just because my invention makes so much money, is this a valid reason to not provide me some kind of immediate relief? It will be another three years before the US Supreme Court decides how I will be allowed to regulate my invention, so critical to the US economy. My plan, is a 7% fee. to guarantee a trusted marketplace.

END EXHIBIT 3

EXHIBIT 4

STATUS QUO CHANGES -
CAN'T CHANGE THE PAST, WHAT ABOUT THE REMAINDER OF THE CASE?
SHALL DEFENDANT BE ALLOWED TO
TEMPORARILY DEPLOY A DIFFERENT,
PERHAPS NON-INFRINGING VERSION OF ADWORDS
THAT APPEARS TO INFRINGE LESS, AND
EVEN MAKE LESS REVENUE, TO HIDE INFRINGEMENT,
AND THEN INSERT THE ORIGINAL SYSTEM AFTER THE TRIAL AND DISCOVERY?

Patent 732's Claim 1 contains 15 phrases describing functions, and in fact for the system to work, an infringer, in one way or another, must perform all 15 to infringe, and they must perform all 15 for the system to work, because in fact, if any one of the functions are not being done, the system will fail. Defendant does each and every one of the 15 functions described in Claim 1 of Patent 732. And in fact, even their new system does so. But it can be expected at

the time of discovery, without a status quo order from the Court, the Defendant will undoubted remove one of these functions, even if it renders the invention much less useful, and even if the Defendant's revenue falls considerably of such change, during the inquiry. And then after the inquiry and court proceeding, undoubtedly their plans would be to revert to the original system that infringed. Judge Daniels denial to recognize (i) status quo changes of and (ii) that I am due some kind of irreparable harm relief, and (iii) his refusal to log into both sytems to investigate likelihood on the merits or decide based on documents provided with the complaint, supports the Defendant's plans to hide infringement during the litigation process and makes the environment set for unfair discovery and an unfair trial.

END OF EXHIBIT 4

EXHIBIT 5

WHEN IS A LEAD MORE VALUABLE THAN ALL OF A PERSON'S CASH IN BANKS:

LEAD VALUE: PAINTER SCENARIO

Fed reserve history and the LOE future

Painter scenario $2k in bank vs lead for $100k

The classic scenario used to describe the necessity of using a human security architecture very similar to our Federal Reserve banking system is, again, the average small home Painter Scenario.

Service Provider: Painting contractor number No. 678 who specialized in painting homes, and doing minor upgrades and repairs.The secrets to reading this header portion of a Lead Detail Report, is understanding that at advanced stages, this lead can be resold for an amount of $2300 until 12pm that day.

guaranteed.

Painter 153 in this scenario has $2000 in the bank. And Painter 153 also has a lead he can resell for $2300, right now, for real cash, in real time, because there is an offer out there. The wholesale system is like stock options, except its a lead option. So at advanced stages a lead, if it gets to you on time, can be worth more than all the money an average painter may have in his bank account. Now here is the bottom line:

> If banks require banking certified databases and bank certified hosting, and lots of security, like Bank of America. Think about all the computer systems, and security systems and servers one of the large American banks must have to link up its online banking system and its computers that hold "the money". There is a lot of security, I have worked in such banks, hired as a software development architect to develop new softwares and information systems. Think about all the security in credit cards. Now think about if we had such a system, but instead of many banks, there is just ONE BIG BANK. And there is no Federal Reserve.
>
> So I knew that criminals would be able to steal leads MUCH more easily than Bank money, and so the system would not work unless it was surrounded by the same kinds of security systems that banks have in place. It's plain obvious. It's what I predicted in 1999, and the data has proven my theories. Now it's time for me to reguate the industry and open up the whole sale markets.

That's what my invention created due to the real time pricing mechanism I invented. Google is like one big bank, without a Federal Reserve. There are two other banks that have customers, but they don't really understand what is going on, they just resell the use of the Maximum Price system to their customers.And I am the single most capable person to be the regulator of this system.

It is my legal right to exclude any entity that infringes on my patent rights from

using my invention in ways that corrupt my brand and corrupt my invention.

2nd Circuit Court Judges

1) To adhere to the Constitutional Law

2) To help the US Economy

3) To adhere to patent law

grant me my rights in the preliminary term. Under my Preliminary Injunction plan, the Defendant will purchase database keys from a bank certified database system, and these keys will be tagged to each lead the Defendant Resells. The interface is merely an accounting that can be done on any spreadsheet, and doesn't require any interfacing, just reporting.

Implementing this system during the preliminary term is the best choice for relief.

Possible Outcomes of granting a preliminary injunction:

1) The Plaintiff loses the case, then the Defendant takes all the money back, and everything that was invested with those funds, the Plaintiff is left with nothing.

2) The Plaintiff wins the case, the public interest was served during the preliminary term, the Plaintiff delivered several new web site businesses on the Internet and some made significant improvements to the Internet.

The Defendant earns enough money to survive, and under the preliminary injunction plan, they will recieve 93% of the revenue they already receive by their infringement. 93% of billions of dollars is a great revenue stream for the Defendant. The Defendant will continue to prosper immensely during the pendency of the litigation.

In the long term, after the establishment of a regulating authority that regualtes the Lead Market, like the SEC regulates the stock market and the Federal Reseve regulates the Banking centers, this center regulation authority architecture will set certain rates and limits akin to the Lead Markets. Banking authorities set interest rates and reserve rates, the SEC does what they do, the Lead Markets have their own set of rates such as saturation rates.

With such a strong set of four factors to determine a preliminary injunction, and the huge potential of public interest being served, the preliminary injunction meets the needs of all parties including the Defendant.

In the event a preliminary injunction is not granted Plaintiff respectfully requests for immediate relief for at least the irreparable harm of not being able to litigate fairly,;

and in either case Plaintiff respectfully requests the Court to take in consideration, when deciding the amount of relief, the immense potential of commercial irreparable harm Plaintiff has suffered by not being able to compete effectively in Internet business due to the direct infringement by the Defendant.

Very few people can understand the implications of the way google produces fraud and violates anti-trust laws through the mis-use of the patented technology. In all probability the case will go on another three years, assuming the 2nd Circuit agrees with our assessment of the situation.

EXHIBIT 6

UNFAIR LEVERAGE AND USE OF FEDERAL COURT PROCEDURES IGNORING CONSTITUTIONAL RIGHTS

Unconstitutional use of Federal Civil Procedures violates Plaintiff's constitutional rights to exclude others from the invention.

Suggested replacement for Federal Civil Procedures for patent cases:

Decide if Internet patent in question appears:

a) real patent, real invention, real case, no ambiguity

b) not real, seems patent troll mentality

c) not sure

In cases of a) and b) - order Defendant to make available appropriate versions and conduct and investigation - check patent claims against alleged infringer's system, and check patent claims against Plaintiff's invention.

If Plaintiff does not have invention, but merely patent claims - handle differently than if Plaintiff has created actual invention. Compare patent using discrete/ cumulative measure, if very discrete take appropriate action, if cumulative, take appropriate action. Use discrete rule - can patented technology be used as stand alone system? Not the same as saying can it be used with other things, because ANY combination of software can be combined to appear cumulative. Relevant question is to determine if patented technology can be used alone.

Order Defendant to produce appropriate versions, and if they don't, and it is found in discovery they hid versions, they pay large punitive damages later for not adhering to Judge's order.

Then Determine likelihood on Merits and the four factors.

Determine if preliminary relief is due, either irreparable harm or preliminary injunction type,

Then move on with case into discovery.

Because four years plus 4 years is not what the constitution intended when they said inventors have rights to exclude others. To only have the right to

exclude others after the infringers have dominated the marketplace violates and denies constitutional rights.

The path now on, will take 15 years, or longer to exclude the first infringer.

1) look up the patent online

see the description of max price in the provisional and nonprovisional app,

and see the final claims describe exactly the invention

2) go to the plaintiff's invention completed in 1999

log in, and test,

3) log into Defendant's system, and test

The entire procedure can be completed at anytime of the day or night, without ANY discovery, and an opinion can be completed in an hour or two. Now, for the first time after nine years, Defendant removed the word "maximum" from its systems, and replaced it with the word bid. But even if it is called bid, it is in effect a maximum price of some kind, even if the actual maximum price in calculations is more or less than the "bid". Higher bids will have higher maximum prices. Hence, because Judge Daniels refused to recognize the status quo change Defendant had made, it is a littel more difficult to acertain infringement based on the Defendant's new software which was released with one intention and one intention only: to hide infringement.

So the sensible and reasonable activity to acertain infringement that could be completed in a few hours by the Courts, has been refused to be done, for reasons unknown to me. And instead the Court has decided to hide itself behind the unfair and unconstitutional leveraging of the Federal Civil Procedures to violate my exclusion rights by delaying the decision.

END OF EXHIBIT 6

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

ROGER MARX DESENBERG,
Plaintiff-Appellant,
v.
GOOGLE, INC.,
Defendant-Appellee.

2010-1212

Appeal from the United States District Court for the Southern District of New York in Case No. 08-CV-10121, Judge George B. Daniels.

Decided: August 31, 2010

ROGER MARX DESENBERG, of New York, New York, pro se.

CHARLES K. VERHOEVEN, Quinn Emanuel Urquhart & Sullivan, LLP, of San Francisco, California, for defendant-appellee. With him on the brief was EDWARD J. DEFRANCO, of New York, New York.

Before NEWMAN, MAYER, AND PROST, Circuit Judges.NEWMAN, Circuit Judge.

Roger Marx Desenberg, acting pro se, sued Google, Inc. for infringement of United States Patent 7,139,732 ("the '732 patent"). The United States District Court for the Southern District of New York dismissed the complaint under Federal Rule 12(b)(6) for failure to state a claim upon which relief can be granted.1 Mr. Desenberg appeals the dismissal and the denial of preliminary injunctive and monetary relief, and argues that his constitutional rights have been violated. We affirm the district court's rulings, and discern no constitutional violation.

DISCUSSION

The invention described in the '732 patent is a method wherein a communications network is used to provide leads to users and providers of services, whereby services are performed for a transaction fee, as set forth in the patent. Claim 1 is as follows:

1. A method for a user using a communication network to search for and identify at least one matching provider of project work, the method comprising;

transmission of a lead comprising contact information that enables communication be-tween the user and the provider, wherein the transaction lead price is the amount of money paid for the lead, and further wherein a service is performed by the user or the provider as a result of the transmission of the lead and wherein the perform-ance of the service includes a service trans-action fee paid by

---

1 Desenberg v. Google, Inc., No. 08-CV-10121, 2010 WL 100841 (S.D.N.Y. Jan. 14, 2010) (dismissal); Desenberg v. Google, Inc., No. 08-CV-10121, 2009 WL 2337122 (S.D.N.Y. July 30, 2009) (Magistrate's Report).

the user or the provider;

storing in a database at least first provider in-formation and second provider information, the at least first provider information and the at least second provider representing at least respective maximum lead prices, each of the respective maximum lead prices representing the maximum amount that each of at least a first provider and a second pro-vider is willing to pay for a lead, wherein each of the at least first and second providers provide at least one service with which the lead is associated;

comparing the respective maximum lead prices to determine a lowest respective maximum lead price;

identifying the provider associated with the lowest one of the respective maximum lead prices;

receiving at least one lead limit that represents a maximum quantity of leads to be pro-vided;

receiving from a user or provider a request for contact information, the contact information enabling communication between the user and at least one of the first provider and the second provider;

selecting at least one provider based on each respective provider's maximum lead price and the lead limit;

calculating a respective transaction lead price for each of the at least one selected pro-vider, wherein the respective transaction lead price equals at most each respective se-lected provider's maximum lead price; and

providing the at least one lead to the user or provider for project work.

The district court held that Mr. Desenberg's complaint did not state a claim on which infringement could be found, the court finding that the defendant Google does not itself perform all of the steps of the claim. The district court explained that claim 1 "clearly require[s] the participation of multiple parties," in that the claim "requires a series of

interactions, transmissions and communications between 'users' and 'providers,' similar to the multi-step patent process involving merchants and customers in BMC Resources [v. Paymentech, L.P., 498 F.3d 1373 (Fed. Cir. 2007)]." Magistrate's Report at *6. The court in BMC Resources held that direct infringement could not be found unless the defendant performed, or directed or controlled the performance, of all of the steps of the claimed method. The court in BMC Resources also held that indirect infringement, such as inducement or contributory infringement, "requires, as a predicate, a finding that some party amongst the accused actors has committed the entire act of direct infringement." 498 F.3d at 1379.

Applying this precedent, the district court held that a claim for direct infringement "would require Desenberg to allege that Google performs both the 'user' and 'provider' steps in the claim, which Desenberg has not alleged, and by the very terms of his patent, cannot realistically allege." Magistrate's Report at *6. The court observed that Mr. Desenberg "has not alleged that those who participate in Google AdWords do so at the behest of Google, even under an expansive interpretation of 'direction or control,'" citing BMC Resources, supra, and Muniauction, Inc. v. Thomson Corp., 532 F.3d 1318 (Fed. Cir. 2008). The court held thatthe complaint did not state the premises of a claim for either direct or indirect infringement by Google.

Mr. Desenberg argues that it suffices that Google provides the communications network whereby the claimed method is practiced. He argues that he stated a cognizable claim for infringement by stating in his complaint that Google has "used, sold or offered to sell . . . an Internet system and/or service that infringes each of the elements of one or more claims of Patent 732." Complaint ¶26. He states that the district court erred in construing his claims, arguing that there is a critical distinction between multiple

parties performing separate steps of a claimed method, and multiple parties performing actions that are merely mentioned in the claim in a "wherein" clause. While Mr. Desenberg agrees that claim 1 requires that a user or provider perform a service and that a transaction fee is paid, he states that this is the result of Google's transmission of the lead, and not separate steps that must be performed. He argues that claim 1 does not require "steps" to be performed by anyone other than Google. He also states that at trial he would provide testimony by users and providers who performed any actions whose proof is required.

The district court, considering these arguments, correctly concluded that the claim required performance of all of the steps in order for infringement to lie. See, e.g., BMC Resources, 498 F.3d at 1380–81 (all of the steps of a method claim must be performed by the infringer, either directly or under his direction and control); Muniacution, 532 F.3d at 1329. The district court properly rejected Mr. Desenberg's argument that "the wherein clauses cannot be relied upon to alter the metes & bounds of my claims." Pl.'s Mem. In Reply to Def.'s Resp. to Objections 5 (Oct. 8, 2009) (capitali-zation altered). Mr. Desenberg argued that "[t]he law is clear that the language of a 'whereby' or a 'wherein' clause is to be ignored where it does not add anything to the pat-ented method or invention," id. at 7, and that "it would be absurd to suggest that the wherein clauses [of the '732 patent] are a patentable element," id. at 8. However, the patent examiner had required, as a condition of patentability, that claim 1 of the '732 patent include the limitation "wherein a service is performed by the user or the provider as a result of the transmission of the lead." See U.S. Patent Appl. No. 09/621,663, Interview Summary (Feb. 15, 2006); see also Ex. M to Complaint ("This was forced in by the examiner, this is not part of our invention . . . ."). The district court treated the patent examiner's "wherein" clauses as a part of the claimed method, and concluded that Google could

not be a direct infringer because Google did not perform, or direct or control the performance of, all steps of the claimed method. The court also held that Google could not be an indirect infringer because there was no direct infringer, as required by precedent. See, e.g., Aro Mfg. Co. v. Convertible Top Replacement Co., 365 U.S. 336, 341 (1961) ("[I]t is settled that there can be no contributory infringe-ment in the absence of a direct infringement."); BMC Re-sources, 498 F.3d at 1378 (citing Dynacore Holdings Corp. v. U.S. Philips Corp., 363 F.3d 1263, 1272 (Fed. Cir. 2004)).

Precedent is in accord with the district court's analysis. The dismissal under Rule 12(b)(6) is affirmed.

We discern no constitutional violation in the district court's denial of the requested preliminary relief, or in the court's suggestion to Mr. Desenberg that he retain an attor-ney to represent him. Mr. Desenberg states that he has been advised and assisted by an attorney, but that full representation is not within his means. Although we are well aware of the cost of patent litigation, review shows that Mr. Desenberg was not treated unsympathetically, and that his position was fully and fairly reviewed.

AFFIRMED

END OF APPENDIX VOLUME 1

Desenberg v Google

January 5. 1999 Concieved to Commit to the Inventions Birth
April 1999 - Requested patent protection as soon as possible from knowledable and experienced patent attorney.

July 22, 1999
ProectWork Version 1.0 is Completed,
and is still live waiting to be used.
Provisional Application describing the maximum price as the maximum amount of willingness

The patented invention, the maximum price lead generation system, is branded with the registered trademark, "Lead Option Engine" with the USPTO.

Filed November 21, 2008
Writ of Certiorari to US Supreme Court

FINISH!!!!

Supreme Court, U.S.
FILED

10-706 NOV 26 2010

In The OFFICE OF THE CLERK

Supreme Court of the United States

Roger Marx Desenberg
Petitioner,

v.

Google, Inc.
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit

APPENDIX VOLUME 3

Roger Marx Desenberg
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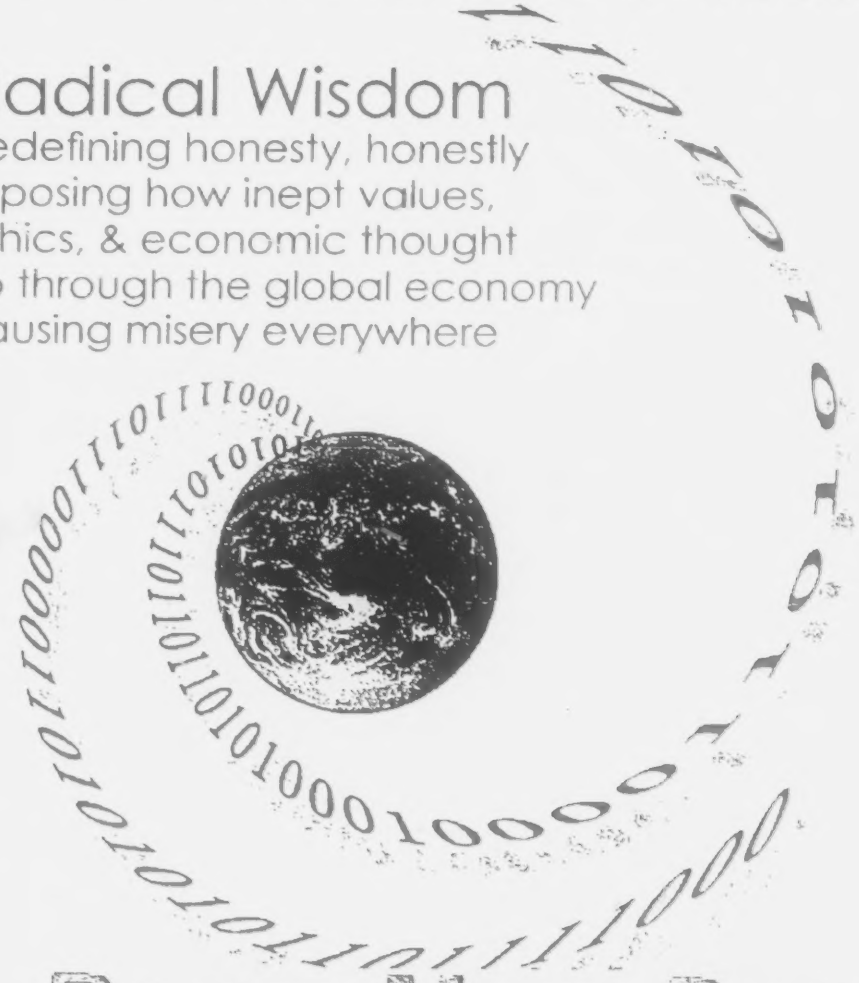
WAY 7

INTONOMICS

THE LAST WORD ON INTERNET ECONOMICS

Radical Wisdom

Redefining honesty, honestly
Exposing how inept values,
ethics, & economic thought
rip through the global economy
causing misery everywhere



Roger Marx Dray

Pen Name for Roger Marx Desenberg

The Internet's First 100 Years

Internet HandBook:
Government
Business
Non-Profit
Education
Community
Charity

By Roger Marx Dray

Release Date: 2005-05-05

www.ogtia.org

Internet's First 100 Years

INTERNET HANDBOOK

FOR

GOVERNMENT
BUSINESS
NON-PROFIT
EDUCATION
COMMUNITY
CHARITY

by Roger Marx Dray

Many of the designations used by manufacturers and sellers and other businesses to distinguish their products or services are claimed as trademarks. Where those designations appear in this book, and publisher was aware of a trademark claim, the designations have been printed in initial caps or all caps.

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Roger Marx Dray Internet Architecture

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penny7.com
way7.com

You can't always get what you want,
but if you try sometimes,
you just might find,
you get what you need.

- words popularized in the free world
when globally released via music in 1969

P r e f a c e

I would like to thank the world for giving me the fortune to have the tools to put together this book. The world has given me family, friends and all the tools I need. For the language of my tongue and the ability to communicate; for the clothes I wear, and the house I live in, I thank past generations. For my Compaq portable 286, my Vaio laptop computer, my iMac, my Sony TRV-20, my education, and the Internet, I thank today's generation. The technical triumphs of the human race during the past century have been awesome.

To those closest to me, I thank you for the inspiration you have given me. Your inspiration has enabled me to attempt difficult tasks, and to accomplish goals through pure determination and not to surrender until they are achieved.

To those who are less fortunate than I, it is my sincere hope that the information and directions contained herein plays a part in helping you and the world to embrace developing technologies with a wisdom that enables our society to reap the remarkable benefits that are now available but still not being implemented into our daily lives.

Even though great technology exists, this does not mean it is put to good use. It is my hope to direct the use of Internet technology to create a better world.

Roger Marx Dray

About the Founder

About the Founder

Roger Marx Dray began investigating and analyzing technology and economics at Emory University in Atlanta, Georgia where he completed two B.A. degrees; the first a joint major in Mathematics / Computer Science, the other in Economics. As a freshman at Emory, in 1979, he was one of the first college students with a Dos based PC. Before that time, only CPC operating system based computers were available. Roger had the good fortune to be part of the first freshman class in the world to have the opportunity to use a PC at their desk. His first computers were a CPC Digital Rainbow, and the Compaq Portable 286, great companions that travelled with him throughout the US and Europe.

Combining technology and economics, and applying the right incentives to make the technology work, has always been one of his intellectual pursuits. Roger has exhibited the unique ability to excel in areas considered different to the extent that they appear as being opposites. He is a computer code nerd, and an avid athlete. His peers in technology have called him a hybrid because of his ability to code and work at a very technical level but still able to lead business analysis through the ability to communicate effectively with non-technical business executives.

Roger has performed computer technology related services for Fortune 100 companies, as well as small business. He has

competently led projects for the best Rapid Application Development companies in the world. Companies and clients he has worked for include United Parcel Service (corporate headquarters), Delta Airlines (Transquest), Turner Broadcasting, Bellsouth, Bank of America, Statefarm, Sapient, Cambridge Technology Partners, WebTV, Medaphis, and Ceridian.

The majority of Mr. Dray's technology work has been as a leading role software architect. His background includes Oracle, Oracle Applications, Infranet, Apple Macintosh systems, object oriented languages such as Smalltalk, Objective C, and Java, and web based technologies such as Cold Fusion, TCL/tk, and ASP. He has designed software projects in many various technologies and worked on air traffic control systems, mission critical financial systems, web based banking and ecommerce. He has created a patent-pending Internet commerce system, the LeadOptionEngine. Mr. Dray has been an avid supporter of implementing advanced software processes, such as CMM (Capability Maturity Models). He has also made an intense study of Activity Based Costing models.

After living in the day-to-day information technology cultures of many different large and small companies, he has become an expert in corporate culture, and creating software systems that people can relate to and use. Mr. Dray's take charge, and first to move approach is well known to those with whom he has conducted intense software design white board sessions.

Mr. Dray commenced attending the Berkman Center for Internet & Society at Harvard Law School during the week of July 1, 2002. During that week-long session he realized the world's immediate need for the release of the "One World, One Economy, One Internet, One Plan" approach. In the course of that session that Roger introduced the first step of the plan, the "Web Site Ingredients Act".

In 2003-2004 Mr. Dray wrote the first Free Global KeyMaker with both plain text, and encypted codes to eradicate proprietary database sites like eBay.com,and Monster.com and match.com. During 2005 and before these sites charged exhobitant prices for Listings, and also controlled, and badly controlled the entire Listing marketplace. They didn't know how to regulate or what to do.

In 2005, Mr. Dray filed a patent application in the US and France for the OgtiaKeyMaker.

After its introduction, an entire new industry blossomed for all the small and medium sized web hosting companies aroound the world. All these companies could now complete for Listings. Listings to sell things, or to get a job, or to get a date. Secure when need be. Plain text and findable when need be.

The OgtiaKeyMaker Internat Architecure White Paper in the appendix of this publication. (This has not actually been done yet)

Introduction: Why One Plan?

What can the Internet do for Mankind?

At its highest level, the Internet can do one thing for people. The Internet can enhance the life-style and activities of human beings and such enhancement can be organized into two areas. The Internet can create wealth, and it can save time. Sending an email, listening to music, using an auction system, purchasing an airline ticket or searching the Web are all examples of saving people time. Playing a game on the Internet or watching a movie is an example of saving time, because those activities can be accomplished without the Internet. Before the Internet, people played games with friends who lived close by, and, of course, this is now easier with the Internet. Communicating with people and education are examples of the way in which the Internet can save us time. Today, the Internet makes participation in these activities a lot easier to accomplish and many, in fact, would not be possible without the Internet. Saving time enables people to do more, communicate more, play more, transact more. Though the Internet will make some people rich, it is impossible for the Internet to make everyone rich. If it could who would work? Who would make clothes or pilot airplanes? It is not economically possible for everyone to be very rich but the one thing the Internet can do for everyone, is save them time. These time savings can be used to travel the world, spend it with family or friends, doing charity work, creating art and music, competing in athletics - or any other endeavor that people want to pursue their individual way of enjoying the fruits of the earth. The Internet can also create wealth by saving people money. It gives people more control over how they create wealth and this has a significant impact on their lifestyle.

It's not the answer that drives us, it's the question.
Knowing the right questions is the answer.

What is the best way for us to implement the Internet and maximize its benefits during our lifetimes? Without a doubt, the Internet will only work towards achieving the best interests of peoples throughout the world if all of us understand and agree the same plan and objectives, play to the same rules, and aspire to the same opportunities that are available to us via the Internet. The mission of this book is to communicate the world's best set of Internet instructions for its wise and intelligent usage by all peoples. The book comprises a step-by-step instruction manual, a handbook, on how people should use the Internet with users grouped to facilitate ease of reference, such as government, big business, small business, charities, communities, academics, healthcare, and legal.

Please Consider:

We (the human race) need a same page document (in several languages) to create a global understanding of how to implement our Internet goals based on:

what will work, and will not work, and
what we need to do according to proper priority.

There is an inherent attribute within the Internet that will force its evolution to eventually mature, but how fast we grow the Internet will be determined by whether the time period referred to in the term "eventually" is to be construed as 5 years, or 105 years. This is no exaggeration. Government, private enterprise, and charity sectors need to work together. Freedom, security, lifestyle, and crime issues need to be in balance and well understood. This book contains the core elements of these issues and highlights common sense attitude that needs to be adopted in their translation and communication to the world.

The world needs your help.
We can do this.

A lot of people whom you and I may know, made poor decisions that

resulted in the Poor Human Internet Implementation of Dec 1998 to Mar. 2000, now commonly referred to as the PHII of 98. What we are left with is a lot of bad Internet architecture, and a lot of inappropriate behavioural norms. People are now trained to react and act according to bad Internet Architecture. What we have been left with is not only bad architecture, but also bad norms of behavior. The opportunity to simply and easily direct users to try new and appropriate ways has been lost.

Therefore, the appropriate audience for this book is:

- Most especially the technical and business world who are responsible for creating Internet Architecture
- Government
- Profit and Non-Profit Organizations
- Charitable organizations
- Businesses, large and small
- Users, people such as you (and everyone is a user in some fashion) especially need to understand the role of government in balancing the freedom and security offered by the Internet. Users will then be supportive of the appropriate government legislation which, though not currently not in place, is essential.

More...

- We cannot seek cooperation nor expect it to work if we have not defined the nature of the subject.
- The Internet can help our economies, and save people a great deal of time, not consume more as is the case in certain areas now.
- One single sentence can often express the one major goal of a project. However, since the scope of the Internet is large, and users require supporting facts, this book comprises many pages, not simply one sentence. Nonetheless it is intended to be a handbook and has been kept as brief as possible. On release

and dissemination of the common sense that resides within these concepts, it is then up to you.

Keep in Mind...

One of the interesting things about the development of the Internet, is that many people believe the organizations that control capital in a particular economic environment have the power to decide and implement any Internet based economic system of their choice. This could not be farther from the truth. The only economic systems that will ever work on the Internet are the systems that make economic sense, and that leave room for virtually all parties to operate.

When we create an Internet system to accomplish something, there are not countless ways in which the Internet will work.

In the beginning of the Internet many people believed, and some still do, that the Internet enables lots of different people to create all kinds of economic systems that will work, and that only their imagination will limit their possibilities. This type of thinking does not work in the cyber world, or the real world for that matter. There is usually one best way, and sometimes two reasonably efficient ways, to create any marketplace on the Internet. For example, there are not twelve great ways to sell plane tickets. There are one or two best ways. There are not thousands of solutions to the problem of SPAM; there are one or two solutions. Music copyright problems cannot be resolved efficiently with several methods; there are one or two best ways. So if you are in the position of trying to think of how to utilize the Internet to facilitate a particular purpose, ask yourself "What method of Internet technology will be working 50 years from now?" *That* is the method we should be implementing today. Finding the socioeconomic model that will work is easiest accomplished by using the services of a licensed Internet architect who has a background in law, economics, business processes, international culture and politics, as well as classical and Internet architecture. However, unfortunately today, there are no licensed Internet architects, because schools are only just starting to establish

curricula now, and our youth have not yet had the opportunity to complete their education. Moreover, government has not yet created a program to license Internet architects. Thus, we have to do our best with what we have. After a system has been created, it should be analyzed by an economist, an Internet lawyer, someone familiar with International cultures, and a software engineer. The incorrect question that will lead you to failure is, "What creative way can we come up with that *might* work?" Spending time and money educating people and implementing a system that will never work in the long term will not help anyone. The correct question is, "What model will work in the long term?"

Most of the major systems people will need are included in this Internet instruction manual. The timetable to have all these steps completed is a number of years away. Regardless of how fast and advanced the best Internet architects, economists, lawyers, and social scientists work, the Internet can only move ahead according to its own global pace. We can increase the speed of evolution of the Internet a little, but we should never expect that all people from all nations would do exactly the right thing at every step of the way simply because a group of people have the answers. The pace of change will never equal the pace we experienced during 1998 and 2000. The answers have to be distributed to many different people from so many different cultures, that it will take some time to spread the news. In the meantime, enjoy and protect the freedom of life, and advance the Internet as fast as we can, which may not turn out to be very fast at all.

It's not the answer that drives us, it's the question.
Knowing the right questions is the answer.

How To Architect and Use the Internet - Step By Step

The next few pages summarize the steps that mankind will eventually be required to take to properly organize, legislate, and architect the Internet. These steps can take fifty years, or ten years to complete; it is all up to us. Divided into eight steps, the summary involves the following topics:

- *Proper Internet Legislation for All Jurisdictions*
- *Spam/Direct Email Solutions*
- *Global Enforcement of Legislation*
- *Rewriting all Intellectual Property Laws*
- *Proper Government and Community Involvement*
- *New Charity and Non-Profit Internet architecture*
- *Global Internet Education*
- *Powerful Internet Labor Marketplaces*

Often, knowing when a solution is complete, is the difference between an intellectual leader, and just another follower.

Step 1: Support for, and Passage of Necessary Legislation

OGTIA / Web Site Ingredients Act

The first legislation to be passed should require all Web sites that store information from users, to self label their index pages with a standard ingredient level, 1, 2, 3, 4, or 5 that explains how securely the Web site is being maintained. Other ingredients such as what business processes the Web site uses may also be included. Sensitive content should be rated as are movies from "G" to "XXX". Adherence to regional laws should also be included. Thus, if a Web site complies with all French laws or Chinese laws, the Web site can display this information label on their index pages. This will enable individual nations to determine those Web sites that adhere to national laws, and those which are in compliance with International laws. This will enable people to make more informed decisions and assist them to do more business on the Internet. The structure of ingredients should be maintained by an organization that is a Global Internet Committee. THE WEB SITE INGREDIENTS ACT SHOULD BE THE NEXT STEP FOR THE INTERNET! THIS ONE LAW WILL SOLVE MANY PROBLEMS AND INCREASE INTERNET TRANSACTIONS! In fact, an Internet based forum was held at the Berkman Center for Society and Law at Harvard Law School, 2002. The forum asked of all 120 participants the most important legislation to be enacted in the first instance for our Global Economy. I suggested the Web Site Ingredients law, and it was voted number one. Participants included law professors, law students, executives from organizations such as the National Public Radio (NPR) and writers from the Wall Street Journal and other publications.

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OGTIA / Financial Data Encryption / HTTPS

Legislation requires all Internet transfers of financial information, such as credit card numbers, to use secure methods equivalent to, or better than 40 bit encryption. This means all Web sites accepting credit cards on the Internet would be required to use SSL, 40 bit encryption or equivalent methods, otherwise the Web site owners would attract a fine.

OGTIA ISP/Internet Residential and Commercial Connectivity Security Act

The Act requires any company that provides Internet connectivity to offer the option of having security software or hardware installed that will meet a reasonable level of security so customers are assured that hackers will not gain unauthorized access into their data. This step is important. Many people experience hackers attempting to break into their computers on the actual day Internet Connectivity is installed, but most are quite unaware of the attack. With the right legislation, individual computers will be more secure, which therefore translates into greater security for the entire Internet.

Step 2: Implement Nationwide Direct Email Systems

Implementing a direct email system, such as Direct Email System 7 will:

- Increase Gross Domestic Product (GDP) significantly.
- Rid the world of most SPAM emails automatically by creating an economic system that permits the flow of supply and demand.
- Relieve a tremendous amount of global stress through increased communications.

Often, knowing when a solution is complete, is the difference between an intellectual leader, and just another follower.

_ Perhaps have more beneficial global economic impact than any other initiative, and do so quickly.

Step 3: Redefine a Global Internet Committee

A committee is needed to Govern the Internet through Legislative, Executive, and Judicial Branches

_ Establish an education curriculum for Internet architects, so Internet architects
can be licensed like doctors or building architects. These Internet architects will lead us into the future, for they will be able to solve our problems easily; solutions for tomorrow reside in the youth of today.
_ Create the body of a Global Internet Committee by appointing or electing Internet architect representatives from participating nations and jurisdictions.
_ Create guidelines for this Global Internet Committee to properly govern the
Internet, its software use, and to regulate Internet oligopolies and monopolies.

Step 4: Revamp Internet Intellectual Property Laws, Internet Patents, and Privacy Behavior

_ Implement a Comprehensive Internet Business Process System that outlines how
Internet business processes will be governed and used. The new Internet patent system *should* only grant monopoly powers to an organization to *regulate* a business process. Exclusive patents for the use of a business process (more detail later) should *not* be granted to monopoly powers, that doesn't make sense, at all.
_ Create a working Internet based economic system for copyrighted material such

as music and literature, and implement government legislation to support these

art forms. Define the norms, laws, architecture, and marketplaces so that corporations and individuals understand their responsibilities.

- Redefine expected Internet behavior as it relates to privacy and the support necessary for the implementation of new Internet laws.
- Define needed Internet browser functionality to ensure the privacy of the user is properly secure.

Step 5: Define How Charities Should Operate Over the Internet

- Examine the current economic system of how charities raise money. Create an economic system where businesses and other organizations can easily participate in raising charitable funds over the Internet. The implementation of an easy to use charity system over the Internet is far from trivial. It is of paramount importance. The current system of how an organization receives approval for fund raising activities in the US varies from state to state, and is very time consuming. Companies need to be able to set up their systems to be able to raise funds easily.
- If the Internet is, it were, a large car engine, running on gas, then it also needs a little bit of oil to run well. Not much oil, just a little bit. And this oil is called charity. With charity included in the Internet, the entire system will work much better.

Step 6: Distribute Guidelines
Explain How Government, Communities, Schools, Individuals, and Businesses Should Use and Not Use The Internet

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_ Implement government supported secure Web hosting to help Internet deployment.
_ Implement government supported Internet business XML communication standards to develop Internet 'Oneness'.
_ Implement government supported micro payments.
_ Define how government can support public access to the Internet to low income individuals.
_ Define how governments can support proper etiquette and behavior as it relates to pornography, freedom of speech, and the right of parents to administrate their children's access to Internet information.
_ Many businesses require a government Internet infrastructure to work well. This will necessitate government being taught what needs to be done, and then assisted with implementation:
_ How, and when community activities should be posted to ensure security and safely.
_ How communities can create safe and secure Internet communication forums. .
_ How to prevent criminals from using or accessing Internet community information.
_ How and when Internet Web sites should be multilingual.
_ How to implement Productive Telecommuting and define employer and employee responsibilities.

Individuals and organizations need to know not only what to expect of the Internet, but what to expect from their Internet vendors.

It's not the answer that drives us, it's the question. Knowing the right questions is the answer.

Step 7: Implement the Internet Marketplace of Labor

Labor emarketplaces will eventually become efficient and mature. When this happens, people will be able to use the Internet to locate instantly the supply and demand for specialized labor. This will not only revitalize and stabilize the global economy, but will also create opportunities that greatly enhance lifestyle choices for some people. Labor emarketplaces will also enable people to work consistently without the stress of wondering where the next paying piecework project is coming from. To implement a working, national, or local labor emarketplace, several pieces need to be in place. Some next steps include:

_ Implement appropriate Internet Reputation Systems.
_ Implement the Lead Option Engine or similar labor market system.
_ Implement required Escrow Services.
_ Implement instant Internet legal assistance to support the closing of Internet deals.
_ Implement all support services required for instant real time Internet labor marketplaces.

The trivial question is:
"What can we do creative with the Internet today?"
The powerful questions are:
"How will we work with the Internet 50 years from today?"
"Can we make that work now?"

Several actions mentioned in this summary have the power to create global economic prosperity and balance. Further, these actions are the most powerful actions available to us to improve the global economy. Interestingly enough, it only takes one team of five to ten people to set an appropriate global Internet agenda and create the proper global Internet architecture. Our challenge is for all free nations

to work closely together, in a global context, in ways never done before. One form of governance is to setup an infrastructure where everyone votes, and the majority rules. Another, and more advanced model, is where qualified representatives are selected and then vote on the complex issues involved. Naturally, due to the complexity Internet Architecture and the highly specialized knowledge required to understand it, only a few people will be qualified to make such decisions.

Thus, a small group of qualified global representatives will be called upon to create an appropriate Internet architecture, devise policy, and enact legislation. If this happens, either formally, or informally, humanity will be able to reap the benefits of a balanced Internet in a shorter period.

Your job is to understand as much as you can so that you, too, can help when the opportunities arise.

It's not the answer that drives us, it's the question.
Knowing the right questions is the answer.

Often, knowing when a solution is complete, is the difference between an intellectual leader, and just another follower.

The Activities Required to Incorporate New Technology into Society

There are four activities necessary for the incorporation of new technology into society. These are:

Action 1: Discovery and Invention

Actually, the easiest part of this whole technology thing is discovering and inventing something. That is the fun part. It is afterwards that things get difficult.

Action 2: Government and Private Sector Regulation

Government must regulate who owns the technology, and who has the rights to use it. Though sometimes simple and at other times very complex, this part is nonetheless necessary. Failure of government to regulate the creation and correct use of technology, determines whether the technology marketplace falls apart or achieves continuing growth and success. Just think about the regulation and deregulation of industries such as Telecom, and the airlines. Think about how California experienced power outages and outrageous costs for power in 2000-2001. These were due to the government's decision to try to deregulate an economy that is desperately in need of regulation. Government regulation and participation needs to be correct for, and appropriate to, each particular marketplace. Private sector must properly regulate technology where required. Some Internet systems require regulation to ensure the Internet works properly. Monopolies, such as operating system and browser software, are to be recognized, identified as monopolies, and then regulated appropriately. Competitive marketplaces, that are indeed competitive without difficult barriers to entry, are to be free and fair to all participating vendors and customers.

Action 3: Build the right products and services

To incorporate new technology into society, the right products

and services must be created by businesses so customers can use and embrace the new technology. The architectural framework governing products and services must be designed correctly. This is often difficult as people are not always quick to adopt new products and services, outstanding though these developments may be. The difficulty then arises that if a business does not experience profits quickly enough, it must then discontinue the new product or service.

Action 4: People must change their behavior to embrace and implement the new technology.

So where are we with the implementation of powerful Internet architectures? At Action 1, it is invented and discovered, though not regulated or governed correctly. The right products and services are yet to be built. People are far from changing many of their habits. While the Internet has been successful in some areas, from a higher level of vantage point, we have barely completed Action 1. Actions 2 through 4 are far from being appropriately addressed. People are not even on the right track when it comes to Actions 2 through 4. It's gonna be a long haul!

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Our High Level Objective:
Build Internet Related Infrastructure Needed for the Long-term Success of the Internet

To understand how immature the Internet is today, let us think back to how North America was in the 1700s. Suppose you arrived in America during that time, and suppose you wanted to be in the food distribution business. And, suppose you wanted to transport food from California to New York; and that is the business you wanted to be in. Fine. However, since there was no railroad, you also had to be in the railroad business, because you needed a railroad. Railroads need steel, so you also needed to be in the steel manufacturing business. So too, for the transportation of food. You needed to be in several businesses to accomplish your primary objective. That is what is happening with the Internet today. Internet businesses are missing some economic models that are necessary in order to fulfil their objectives. The Internet is as immature today as the food distribution business was in the 1700s.

There are so many missing elements to the Internet that it is impossible for a great number of today's dot com businesses to work well and, especially, on a global scale. One of the missing pieces is 'reputation companies'. Credit bureaus exist for banks, mortgage companies, car dealers, etc. but there are not any groups of reputation companies that can be used to help confidently assess the ability to perform and meet its commitments of an individual or an organization. Virtually everyone has a right to work, and proper reputation companies will enable excellent matches between customer and vendor. A vendor is not simply good or bad, they must be matched to the right customer. Creating a global reputation system is a huge, monumental task but as it is created, a tremendous numbers of successful transactions will occur. Recently reported in the *Wall Street Journal* (WSJ), a user found an attorney on the Internet and sent the attorney a $5000 deposit. The attorney was a crook, and he stole the money. With a

sound reputation system, people will be able to access information that will prevent many of the crimes that are similar to this type of scenario. Reputation companies are just one piece of the puzzle needed to create a mature and working Internet. If government and private sector businesses work together to create these infrastructures, business and, the economy in general will pick up, and the Internet will be able to work its magic.

Often, knowing when a solution is complete, is the difference between an intellectual leader, and just another follower.

Step 1: Government Legislation

Government Introduction

There is so much the government and private sector should be doing to create a healthy economy. New technology and the Internet will bestow a great deal of economic benefits on all of us but to harness the power of those benefits requires work, long-term commitment and common sense. I hope that you will help spread the word – quickly - about what we can all do together to create a healthy economy. Time is of the essence.

Legislation Needed

Three Legislation Areas for Government to address ASAP:

Web Site Ingredients Act

A huge problem associated with the Internet is that users do not know the type of security provided by each Web site. If users do not know how secure a site is, they will not be able to make an informed decision as to whether or not to use a particular Web site. Users will frequently choose not to use any Web site if they do not understand the site's security features. The lack of security information on Web sites dramatically slows acceptance of the Internet by the public that is a crucial element in quickening the pace of development, including legislative. The situation is very similar to food. Virtually every food item in a store is required to have a label describing the exact ingredients in the food. In picking up a jar of peanut butter, for example, one can see what additives there are besides the peanuts. This is obviously fair. If a business is going to sell you food, you have a right to know what you are buying. The same thing applies for the

Internet. In using a Web site, you have a right to know what the Web site comprises, the laws and policies it follows, where the data center resides, (an apartment, office or a secure data center), what rating it carries (G, PG, R, XXX), what jurisdictions it complies with, and all types of other Web site descriptive information.

Five security levels should be defined by an organization represented by government, business, and community. These levels need to be listed on the Internet. Though government standards do not yet exist but should, all Web sites that accept information of any type should be required to post on its main index page the site's level of security compliance. These standards are to be defined and controlled by an organization similar to the integrated nations Internet commission as discussed in Step 3. Such definition and control will allow users to understand the type of security Web sites are offering. Consumers have a right to know what they are using. If government draws up and enacts legislation that requires all Web sites collecting user data to self label their security environment, business processes, and content ratings ("G" through "XXX") to allow users to decide which Web sites they want to use, competition becomes fairer and more transparent. If one Web site has higher costs due to better encryption and security techniques, its users will be able to understand their choices and make a more informed decision. As an example; "Joe, I can use this Security Level 2 Web site to store my pictures and community information for $22. Now this other Security Level 1 Web site costs only $8. I prefer the more secure Web site for $22." Without legislation, the user will never know which Web sites have adequate security. Some Web sites, such as banks, need to have Level 4 or Level 5 security. Other Web sites, such as chatting about sports, do not require that high a security level. Security analysis includes studying two ports. One port or gateway is the Internet. How secure are the computers from criminals that are located on the Internet? The other port to the computer is that of physical location. A criminal can also go through company doors and get physical access to the actual computers in the computer rooms. Some computers are in highly secure areas where ID cards and hand scans are required for entry.

Partnering with your competitors may be the only way to build an Internet based emarketplace that customers find efficient and worthwhile.

Other computers are not in secure areas, and allow easy physical access. Some systems audit all computer personnel who enter into the computer rooms, what they did there, and when they were there. Others allow anybody in the company to have access to the computer rooms, and do not track who enters these rooms. To analyze security properly, Internet access and physical access processes need to be reviewed. When government finally passes this kind of legislation, private sector and government use of the Internet will increase.

Multiple ratings are applicable for multiple regions. Business processes that are adhered to, such as ISO9000 and other business accreditations systems, can also be included in the label. This label should be accessed by a simple click by any visitor to the Web site. Further, within the label, a suggested redirection page can be used for compliance verification. Thus, a visitor from France can be redirected to pages that follow French law, and a visitor from Australia can be routed to pages that follow Australian law. Users under twelve years old can be directed to appropriate sets of pages for children. And so on, and so on. Thus, each Web site can set itself up to have various sets of pages. The Web Site Ingredients Act will solve many problems, such as pornography, as well as enabling people to make well-informed decisions on the Internet. The label will allow specific jurisdictions to decide on which sites to filter, and those that permit access. A jurisdiction may be one computer at a residence, or an entire nation.

Require Encryption (SSL or better) to Communicate Financial Information over the Internet (such as credit cards)

The government is required to pass legislation as soon as possible to make it illegal for Web sites to gather credit card and related financial transaction information without proper encryption. Companies and individuals that engage in this kind of practice will be fined. The reason is that the Internet should not only be a secure place where crime is reduced, but where the sloppy behavior of users is controlled. Users should not have to be computer scientists just to figure out if their credit card information is secure. In a browser,

if SSL encryption is being used and the status bar is showing, the user is able to see a little lock that is closed. This tells the user their information is delivered through a secure SSL connection. Many users are unaware as to how this security works. They are also unaware their browsers have status bars showing the little lock. And how the information is transported across the Internet also determines the level of security.

This legislation will make it illegal to send a credit card number via a non-secure email. You would therefore not be able to even send your credit card info in a regular email. This legislation would also require all companies that take in financial transaction information to use SSL or better encryption. The passage of this legislation will increase the number of transactions conducted on the Internet as well as help pave a road that engenders confidence and trust among its travellers.

Require Companies Installing Internet Connectivity to also Install Firewall Security

Any company that installs Internet Connectivity should also be required to install or certify that firewall security software or hardware is in place at the customer's residence or business. At the time of this writing if a consumer orders DSL or cable modem service, most Internet connectivity companies will install the connectivity, but not install any security software or hardware. The very same day a user receives Internet connectivity, the consumer often experiences hackers on the Internet trying to gain access to their system. Consumers should not have to be software architects or network gurus to be sure their systems are safe. My grandmother should be able to order Internet connectivity without being ripped off by hackers.

The passage of these three key pieces of legislation will significantly increase the number of Internet transactions.

Facilitating Communication and Oneness

Oneness refers to the economic necessity of how the Internet needs to appear to users as one entity, and not just a collection of

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unconnected Web sites. If you are looking for a job, and you enter information into one job site, such as Monster.com, or Headhunter.net, what should happen and what actually happens are two different things. You should be able to enter in your information once, and instantly all relevant job sites on the net should know about you and your job request. You should not have to enter the information ten times. Some emarketplaces fail today, and will continue to fail, because of this lack of oneness. In a condition of oneness, the Internet appears as one entity to the user. Oneness can become a reality. One way government can help is to store and distribute communication standards for Web sites. If a user wants to create a Web site, say, a job site, the user will be able to download the necessary interface information to permit the new Web site to join the Internet world community. Many of these standards have not yet been built. They need to include descriptive data as well as transactional data to allow for the transfer of money for commissions and fees. Most likely, this type of interface will be an XML interface. Government can supply the Web hosting for these standards. Oneness does *not* mean only *one* entity exists. However, it does mean that independent systems must *work together as one* to create a well working system for end users. As an example, suppose a local city government has standard XML codes posted on their Web site. Further, suppose the local government has a list of local Web sites. If someone wants to sell their chair, they can put some code on their Web site that conforms to the standard. Anyone wanting to look for a chair locally, can use a very simple search robot, to search all the Web sites listed, and look on a specific page, (such as ogtia.html), of standard codes and in a few seconds people can buy and sell a chair, without the headaches and costs of using some third party Web site. It is really quite simple.

What Can the U.S. Government Do To Stimulate the Private Sector to Create Technology Businesses for the Public Good?

The government can create grant programs, tax breaks, and all the other tools used in the past as incentive for businesses to create

the necessary Internet infrastructure and new businesses that will generate jobs. The government can create an economic task force whose mission is to seek out businesses that will help the economy. After businesses are identified as possible candidates, the government can conduct economic analyses to ascertain whether they serve an infrastructure purpose. The government can then label this business, which will help attract investment to it and instill public confidence. Further, a well run business that provides a necessary infrastructure component, could benefit from the offer of a government-funding grant.

Government Conclusion

The above mentioned policies will happen because they make sense, and because they are required for the Internet to work well. We might as well work together and make these things happen sooner, rather than later. Companies and government need to be spending their time on building required infrastructure, creating legislation to guarantee security, and forcing Web sites to afford their users the information they need to make informed decisions that will increase the number of Internet-based transactions. That is what the Internet world should be working on. Please pass this information on so we can all create a better *new* economy; one that works. Time is of the essence.

Partnering with your competitors may be the only way to build an Internet based marketplace that customers find efficient and worthwhile.

Step 2: Direct Email System 7

There is only one best way to implement direct email across the Internet, across the USA, across the globe. A real direct/certified email marketplace does not yet exist but it soon will. Direct email can have an impact that is more positive on the global economy than any policy or global activity during the next five years. To establish and understand the final long-term Internet-based economy that will eventually replace 90% of all traditional direct and certified mail, the world needs your help. The re-education of business employees to work with direct email is a monumental task.

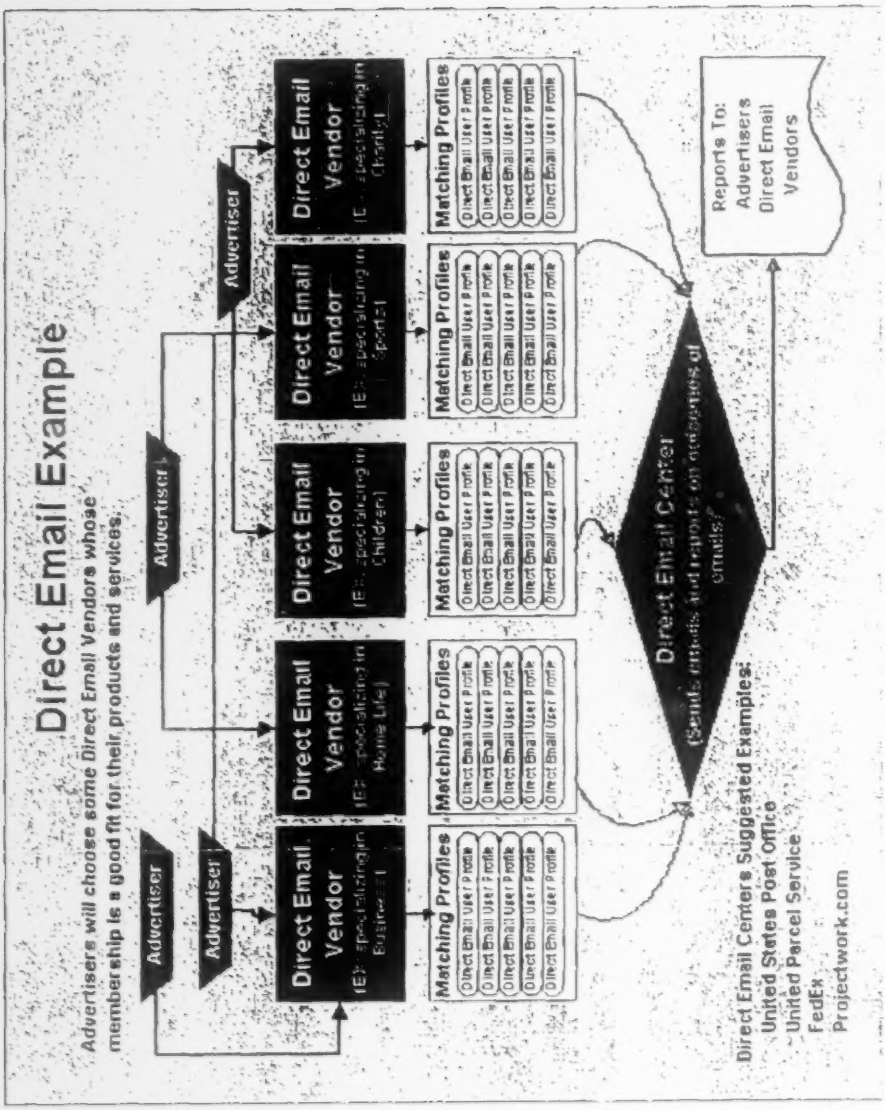
There is a tremendous lack of understanding currently among US Congress members, governors, and politicians everywhere about how to deal with current SPAMs. **The answers reside in asking the correct question. The wrong question is "How do we stop SPAM?" The correct question is "How can we build an economic system to replace both direct and certified mail with both *direct and certified email?*"** The interesting thing is that the answer to the second question (building a direct email economic system), will rid the world of SPAM anyway, because an avenue will exist for advertisers to reach Internet users. The United States is in position to lead the world in direct email by implementing it correctly. America and the global economy require competent and strong leadership in the integration of direct email, and message technology into our economy. Document delivery systems such as the one UPS implemented and shut down in 2002 are critical pieces in the implementation of direct email. Reasonable pricing is also of paramount importance to its success. It is estimated that email postage cost of less than one penny per email is needed for the system to work.

Another foe to defeat is fear. UPS, USPS, and FedEx Delivery workers and management will be extremely fearful of implementing a direct email system that will greatly reduce direct and certified mail. Though change is often a bit intimidating at times, workers can still

keep their jobs through re-education. For USPS, FedEx, and UPS the best way to replace revenue lost due to Internet communications is through a direct email system.

The future direct email scenario is simple. The following description is how a real direct email system should work. It does not at the time of this writing, but this will change. For example, suppose a person who sells bicycles wants to email 5000 people about some great bicycle pricing. And let us also assume there are 5000 people who do want this information. The Bike Guy goes on the Internet, and finds a direct email vendor. The direct email vendor happens to have 5000 email addresses of people 'who want the latest bike pricing'. In addition, they want up to three emails during the current week about bike pricing. So the Bike Guy pays the direct email vendor $200 (the price is just an example; it could be much more, or much less, depending on supply and demand). The Bike Guy NEVER gets an email list from the direct email vendor but how does the Bike Guy know the emails were actually sent? And how does the Bike Guy find out the quality of the emails sent? Easy. The direct email vendor sends the US Post Office or FedEx, or UPS, a secure list of email addresses, and the Bike Guy's email message. Then the Post Office (or FedEx or UPS) sends out the emails. The addresses may reside on a Post Office, FedEx, or a UPS server for added security. After the emails are sent, 24 hours are allowed to elapse before the Post Office (or FedEx or UPS) emails a report to the direct email Vendor and the Bike Guy. The report contains how many emails were sent, how many 'remove me' requests, and other relevant information. So now the Bike Guy knows for sure 5000 emails were sent. The Bike Guy knows how many people wanted removal from the list and this shows the Bike Guy the list quality. If a lot of people sent 'remove me' requests, the direct email Vendor is not doing a good job of communicating with their customers or giving them the information they want, in the quantity they want. And so, voila! The Internet can be used to increase commerce dramatically. This process alone, once properly implemented, will directly improve the world economy more than any other initiative available to us.

Economic analysis is the one and only factor that will determine if new Internet businesses have a reasonable chance at survival and success.



Oneness and Direct Email will make the Internet seem miraculous to you.

The following text is a technical description of how such a system will work. If this bores you, and you already understand the scenario, you certainly can move along to the next section.

The Players in the Process:

- **Internet Users**
  They must complete direct email profiles with appropriate vendors for the system to work. The profiles should be a simple Web form with few fields to fill out so as not to burden users with time-consuming work. These simple profiles contain the type of information each user wants. It could be nothing, or several emails a day concerning various matters.
- **Direct email vendors**
  These companies take the place of yesterday's direct mail companies. They will collect direct email profiles from individuals and organizations that detail exactly what kind of information they want. The profiles also include how much information users want, and when they want it. Direct email vendors will usually collect profiles of a particular interest group, such as sports, business, French, home life, children, and so on.
- **Advertisers**
  Advertisers will comprise companies, organizations, government, charities, and individuals looking to sell products or services, or seeking donations and volunteers, or looking for workers.
- **Direct email centers**
  Centers will act as a clearinghouse for Direct Email. Direct email vendors will submit email content, and the email list to the direct email center using the secure environment the center provides. The center sends email to the users using the type of security requested by each user. The center also reports the number of emails sent, bad addresses, and removal requests to the advertiser and the Direct email vendor. Typical direct email centers will be companies like United Parcel Service, FedEx, and United States Postal Service.

Economic analysis is the one and only factor that will determine if new Internet businesses have a reasonable chance at survival and success.

Oneness and Direct Email will make the Internet seem miraculous to you.

Direct email profile - Example

Here is an example of a DEP (Direct email profile). The DEP is managed and administrated by a DEV (Direct email Vendor). The vendor maintains contact with its members, and reviews and approves all emails sent to the vendor's email lists. Commercial advertisers normally pay small fees for the usage of the list. All organizations seeking admittance to a vendor's user base are the DEV's responsibility to research, conduct background checks, and approve or reject.

- **What You Want:**
  One, or two sentence description of
  the information you require
  and an optional NAISC Category Code
  (If applicable, can leave blank)
- **Start Date and End Date**
- **Email Limits**
  Max Per Week
  Max Total
- **Reason**

At least a small portion (1%-3% or a minimum number) of the emails should be from some charitable or non-profit organizations. Putting charity into the mix will not be required by law but, rather, by norms of behavior. The entire system will work better, and profits will endure longer, if charity is added to the overall direct email system.

Economic analysis is the one and only factor that will determine if new Internet businesses have a reasonable chance at survival and success.

The Data and How It Should Be Used:

_ DIRECTMAIL_PROFILE

The direct email profile is held in this table. This profile is private and confidential to the Internet user and the direct email vendor. If a direct email center offers the service of storing this data for the direct email vendor, the direct email center should never be allowed to use this profile for its own use. The direct email vendor should periodically contact the user to keep this profile up to date. Each Internet user may have multiple direct email profile records, with one record for each type of request.

_ LANGUAGE

This is the language the user wants for the receiving of their information.

_ INFO_REQUEST_BY_USER:

Plain words and sentences input by the user to describe what information they want. Using only combo boxes, without the freedom of user to enter anything they need, is not recommended. Combo boxes make things easier for the direct email vendor, but more time consuming and more limiting to use by the Internet user who is filling out the profile. One of today's problems with the Internet is the lack of proper customer service. The customer will be better serviced if they can quickly and easily fill out forms. The priority should be saving time and effort for the customer. The focus of the Web forms *should not be* saving time and effort by the direct email vendor.

_ INFO_REQUEST_XLATED:

A program can be run on the Info_Request_By_User field to create a keyword list that can be better used for selections by the direct email vendor.

_ USER_CATEGORY:

This field is for the Internet user's use only. They may put their many profiles into categories, such as "Business" or "Family" or a client.

_ STATUS:

Normal use is "APPROVED", "UNAPPROVED", "HOLD", "ACTIVE", "CANCELLED","FILLED"

MAX_EMAILS_TTL:

This is used to indicate the total number of emails over the life of the profile the user wants to accept. After this total is reached, status should be changed to "FILLED" and no more emails should be sent regarding this request.

_ PERIOD_LEN_DAYS:

The number of days between emails. Does the user want emails about their request daily? Weekly? Monthly?

_ MAX_EMAILS_PER_PERIOD:

The maximum number of emails per period, which will be per day, or week, or month, etc.

_ NEED_MEASURE:

This is an indication of how much the user wants this information. The user

may want to purchase something right away, or they may be just browsing. A number from 1 to 5 is usually put in this field.

_ DIREMAIL_VENDOR

Direct email vendors should be properly reviewed and approved or disapproved by the direct email center. Data such as Social Security numbers, driver license numbers and criminal background check information should be used to determine if a direct email vendor is approved. The USERID field can linked to standard company and contact information tables.

_ DIREMAIL_EMAILS

This table stores the email content and email lists the direct email vendor securely uploads to the direct email center. Once the center receives the request to email, they will go through an approval process. The center should be able to process and send emails within 1 to 5 business days. The reasons for email requests not being approved should be sent to the direct email vendor. The VENDORS_CLIENT_REF field is for the direct email vendor's use only.

_ DIREMAIL_COSTS

This table tracks all costs associated with the direct email center charging the direct email vendor as well as for the direct email vendor charging the advertiser for one emailing.

_ DIREMAIL_BAD_REMOVES

This table is maintained by the direct email center to track all bad addresses and removal requests that are returned from an emailing. The direct email center has the responsibility to make sure direct email vendors are not abusing the system.

Economic analysis is the one and only factor that will determine if new Internet businesses have a reasonable chance at survival and success.

Step 3: Empower and Redefine - a Global Internet Committee with Power to Enforce Global Internet Law

The world needs a powerful and well-respected governing body to work hand in hand with all nations, and the United Nations. Possible funding for a global Internet committee could come from nations who choose to volunteer to join by placing a small Internet access tax to ISP providers who would then pass a small fee on to their customers. A customer who receives a $20 monthly bill may be taxed $0.10, so their total bill would amount to $20.10, individually a relatively insignificant increase but globally, a phenomenal amount.

One of the major problems with today's Internet is that unqualified people are making decisions concerning Internet architecture. The way to solve this problem is to create curricula at universities that include all the necessary background and education needed to produce responsible and competent Internet architecture decisions. The deployment of appropriate Internet architecture requires decisions that synthesize laws, lifestyles, marketplaces, and even classical architecture. Internet architects require accreditation. Until qualified, accredited Internet architectural decision makers are available, we have to work with what we have; mostly unqualified software engineers, without relevant education or experience making such decisions. However, in the interim, support from an economist, a lawyer, a politician, a computer scientist, and someone familiar with international cultures should make competent decision making possible.

Curricula for Internet architecture is required to be on offer from universities. An Internet architect needs to combine many diverse skills in diverse areas, including the following:

- Internet law
- How to change public policy and legislation in the US and abroad
- Feng Shui
- Understand background in economics
- Extensive background in computer science
- Extensive background in business cultures, large and small
- Understanding of classical architecture
- Extensive background in business and technical processes
- Understanding of core values, team creation, and project management

The global Internet committee can appoint Internet architects. Each Internet architect can represent a region of technology; the number of representatives from a region based on a region's population and Internet involvement.

Each Internet architect can have a cabinet of people representing their community, with a representative from:

- Government

- Large Business
- Small Business
- Communities
- Academia
- Health Care
- Legal Community
- Charities

There can be three levels of representatives. Level 1 will be representatives from the seven most populous and most Internet advanced nations. One Level 1 Internet architect represents Third World nations, as a block. Level 2 representatives can be from larger states, such as California or New York, and smaller nations. Level 3 representatives can be from smaller states, communities, and other nations requiring representation.

The world's Internet governing body can have significant powers in their governance of the Internet. Nations can choose to join, partially join, or not join this global Internet committee. The GIC should have full use of the ancillary United Nations agencies, such as its courts and militia. A global Internet committee can have a total of 100 to 1000 Internet architect members representing various jurisdictions. It is of paramount importance that certain international commissions have access to police and military power to enforce the law. Perhaps a currently existing commission or group will evolve into a strong global Internet commission that will direct nations into appropriate regulatory responses for proper Internet architecture, law, and behavior.

Economic analysis is the one and only factor that will determine if new Internet businesses have a reasonable chance at survival and success.

Step 4: Revamp Internet Intellectual Property Laws, Patents, & Licensing

I would like to thank the staff and students who attended the Berkman Center for Internet & Society, at Harvard Law School, July, 2002 for the inspiration that enabled me to confidently confirm and finalize solutions to some key intellectual property and patent law problems. The Berkman Center sessions consisted of five days of classes that began at 9:00am and often did not end until late into the night. There was even a full day class on the fourth of July in Boston. We were all motivated. The inspiration generated by Dr. Jonathan Zittrain, Dr. Yochai Benkler, Dr. William Fisher III, Dr. Charles Nesson, and much of the student body that comprised of law professors, executives, students, and writers is deeply appreciated. Their inspiration helped this text to evolve and mature.

A Needed Comprehensive Global Internet Patent and License System That Will Work

Patent Background:
Patents and intellectual property laws were orginally created for sound economic reasons. The original mission for patent law was as follows:

1. Promote Progress
2. Provide financial incentive to develop patent for use in society
3. Publicly disclose patent for further progress

The Internet is a new territory requiring much different patent legislation than the current legislation orginally created for the Old World Economy. To devise a system that will work requires defining the mission, and objectives of an Internet patent system, as well as being able to understand the reaction that new patent legislation will have on society. Should a system be implemented that is not reliably

integrated to work within our global political and economic system, then its use and compliance will be minimal. To understand how important this implication is, think about highway driving. Are there any highways where there are speed limits of 55 miles per hour, but virtually everyone drives at 70 miles per hour that you know of? If a law does not make sense, the majority of the public will not comply with the law. This point is extremely important in implementing an Internet Patent System. Here is what the mission of a new Global Internet Patent System should be:

Grant patents for Internet technology where the patent process will help promote, distribute, and regulate where necessary, reliable Internet technology as quickly and efficiently as possible throughout the global economy.

Internet Patents should only be awarded for Internet technology that requires regulation and control.

The monopoly powers conferred by the awarding of a patent should be limited to the regulation, audit and management of the technology,
not for its use.

Failure to specify regulation and audit control as requirements of patenting Internet technology will probably result in development being hindered and science not promoted as required by the original patent system authors – an aspect that is not usually taken into account by courts. The key here is to understand when a patent grant will hinder, or promote development. In the old days, a patent to manufacture a product could have given the inventor 17 years to the exclusive right to use and develop the patented invention and reap some profits from it. At that time, the 17 year period made sense. But technology has changed that duration. It will take much less time to reap windfall profits from a powerful Internet based patent. Old style Internet patents offer society little value other than to create a slow, unmanaged but growing monopoly situation that

implementers. 'Author' refers to the original author or their assignees. Thus, changes to GPL are required for the following reasons:

1. Changes to the restricted functions may cause unfair use of the software system for some of its users.
2. Unfair or criminal use that may occur due to unauthorized modified restricted functions may detrimentally affect other participants by degrading the reputation of the software, as well as unfairly or criminally affecting the participants of the software.
3. Given that servers running such software have core functionality in communicating with other servers running the same software, unauthorized changes to the restricted functions may cause detrimental affects to users and other servers running the same software. Thus, unauthorized modifications of the restricted functions by one author may cause detrimental affects of participants who use the software on one or more servers.
4. The author requires the ability to ensure all users of the software that the functionality of the restricted functions will always work as intended.

Thus, the following license goals have been added to the GPL to create the RPL (Restricted Public License):

1) Only the original author, or their appointed organizations, may change or update the following restricted functions:
<The functions are listed here>
2) Further, it is prohibited to create code or functions that undermines or changes the intended functionality of the restricted functions.
3) Should a defect be identified, repaired or removed by the original author, or their assignees, and a new version of the restricted functions made available, users agree that they will upgrade their software with such new version. Such upgrade

hinders Internet development. Most software process authors, such as Priceline, do not have the bandwidth and support necessary to service the world's languages and jurisdictions. It makes much more sense for, say, Priceline to regulate the use of its operation, and have other Internet businesses around the world use its patented process. Such an architecture will be more advantageous to all parties.

So the question is, does technology require regulation or control? As an example, suppose it was necessary for certain rules to be rigidly adhered to for a newly devised method of doing business to work. Suppose further that it is a system enabling cooperative functions of many organizations throughout the global Internet. Further, that one organization not following the rules could jeopardize the success of other organizations using this process. In such a scenario, the technology requires regulation or some form of control. Such a technology should be granted a patent because this will help promote Internet technology and science. However, under a new, more sensible patent system, the awarding of this patent should incorporate the right of the inventor or author to the regulation and certification of the technology via audits and other methods to ensure correct usage. This regulation will most likely include fees paid to the regulation organization, the patent owner. This is the financial incentive for inventors to patent and implement the system. This same scenario also illustrates the pitfalls of the software licensing standards of the General Public License (GPL), with architecture permitting poor or criminal quality to be perpetuated. A software under a GPL license allows users to change the software in any fashion they want, and its distribution is not regulated. Though the GPL works for some softwares, its does not work for many software systems such as cooperative ebusiness marketplace systems. A Regulated Public License is a much more appropriate approach. An RPL architecture ensures a software will remain reliable and work according to the original authors intention. And the RPL prevents criminal software publishing and distribution activity.

It's not the answer that drives us, it's the question.
Knowing the right questions is the answer.

is to be within 90 days of the time the author or their assignees make the new restricted functions available on a Web site over the Internet. The user agrees it is their responsibility to check the author's Web site for new restricted functions.

4) Should an upgrade of the restricted functions be created by the author, and the author makes available the upgraded restricted functions, the users of the software may, at its option, upgrade their version of the software.

5) The author is required to maintain a list of email addresses, where users of the software may enter their email addresses on a Web site on the Internet, so the Author has the ability to email users of any changes. The Author agrees to attempt to contact all active users on such email address list, by email, to inform them when a new version of the restricted functions is available. Given the plethora of situations that may occur to prevent a user from receiving an email, the author is not required to ensure receipt of any emails by users.

Patent Conclusion

There probably will never be a good reason to grant an inventor monopoly powers over the use of its patented process. There are windfall profits to be made through the regulation and auditing of Internet technology so it is neither beneficial nor necessary for an inventor to have monopoly power over the use of its patented process. Just the regulation of its patented process will facilitate high profits. To implement an Internet technology system properly and quickly for participants, support, regulation and audit is necessary from many organizations and nations. The wrong Internet or business process patent system will always hinder development and advancement of the Internet. The wrong system is in place now, at the time of this writing. Both the current patent system and the General Public License, need to be replaced or augmented by a new common sense based patent system, and the Regulated Public License.

Copyrights and Music and the Internet

In the end, our digital Internet only exists to enable all of us to more enjoy our analog world.

The domain name system is an example of how the patent process can work. Though the idea of domain names is not patented, how the domain name registration system is setup is a fine example of how other patented processes can and should be set up. In the beginning one organization distributed domain names. Now many organizations distribute domain names. And all of these organizations work together. The system would not work well if two people signed up for the same domain name. All the domain name registration companies communicate and interface together.

For business processes, a patent should *not* grant the author a monopoly on *using* the patent, the patent should *only* grant the author a monopoly on *regulating* the patented business process. The regulation of a business process patent on the Internet can offer the author enough financial incentive to implement a patented system of regulation with a maximum regulation fee that can be charged to Internet users. This will promote the advancement and proper regulation of business processe software, operating system software, and other softwares, over the Internet.

The term of an Internet patent should be established by the Patent Office according to what is appropriate. A lengthy 20 year term will probably never make sense for most Internet patents whereas in the past a 20 year patent term was reasonable for many industries. Instead, there could be varying patent terms ranging from 1 to 20 years, depending on the actual patent and it application.

Given that a patent should offer the inventor a monopoly for a limited time to regulate the use of the technology, and given the Internet enables some businesses to develop extremely quickly, an Internet patent expiration date should reflect the new order of Internet time. To do otherwise will hinder the development of Internet technology by keeping global competitors out of the marketplace long after the patent owner has benefited from the reaping of enormous windfall profits.

Adhering to rules of traditional patents that only permit the inventor and the patent's assignees to use the patent will drive competitors to the circumvention of the patent system, presently made

possible through Internet operations hosted in non-patent abiding nations. Where traditional patents focus on who is allowed to *use* the patent, Internet patents should focus on who is allowed to *regulate* its use. Now, on expiration of a patent, anyone can use, properly or improperly, the patented business process without regulation. One important realization in developing a comprehensive patent system is that people will not, and cannot abide by the rules of an unworkable system. Hence, the creation of a relevant and sensible patent system where the monopoly owner has adequate time to regulate and profit from such regulation, and where competitors entering the marketplace have a reasonable period in which to enter such marketplace, is extremely important for the rapid evolution of the Internet.

The Internet adds a new twist with patents; the need for auditing and regulation to ensure a business process system, or other software system, will work, similar to the way in which Federal Reserve regulates banks. An administration and auditing fee can supply the funds needed by the accrediting organization to perform its function and to profit enormously from the venture.

Thus, in our example, under a revamped Internet patent system, the patent office can deliver the following stipulations, as an example:

> *Business Process 542 has a patent with the following stipulations:*
>
> 1. The term of the patent shall be seven years.
> 2. The patent owner shall be able to regulate and audit use of the patent for seven years, renewable for another seven years provided the patent owner or its licensees have reasonably regulated such use.
> 3. The administration / regulation fee for registrants shall be $500 annually per registration, plus a 3% transaction fee and will endure for seven years.
>
> This concludes this example.

It is important to understand that the study of Internet law as it relates to patents should go beyond just defining the *nature* of Internet legislation but include *how* the operation of the entire system *should*

In the end, our digital Internet only exists to enable all of us to more enjoy our analog world.

be conducted. Government can then decide which roles it will play, and which laws require enactment to promote the deployment of Internet technology.

Another Example:

Let us see why a 'one click purchase system' should not be patentable:

1. First, it is obvious. It is plainly obvious that providing the least number of clicks to purchase is a good idea. So even under traditional patent law this is not a patentable thing.
2. Second, it does not require significant resources for its implementation and development within our culture. Some people will always argue that it takes considerable resources and money to present scenarios but this does not prove such proposals *require* significant investment. If such were the case, only one scenario substantiating the requirement is necessary.
3. Granting a patent to such a system will hinder technology advancement, and few people would respect or adhere to patent laws relating to such a patent. Companies would implement their own one click purchase system regardless of what the courts do.
4. A one-click purchase system will never need regulation or auditing.

Aside from being obvious, a 'one click purchase system' does not take weeks, months or years in order to gain public acceptance. Nor does it take significant financial investment to implement such a system. It's a little like granting a patent for the process of looking up in the sky. Anyone has the right to look up in the sky. Anyone has the right to create a system that requires the least number of clicks possible to make a purchase. It's so obvious. Here again, it shows the need for Licensed Internet Architects to lead us into creating proper laws, and Internet Architecture, and proper Norms of Behavior.

Another Example:
Priceline's Reverse Auction Patent System – a more sensible option:

1. A reasonable term on this patent would be seven years;

Mission and Goals for Music Distribution:

- The economic system must allow people to listen to all music they would like to listen to during their life times without having to pay exorbitant fees. (Should the economic system require exorbitant fees, people will not play by the rules of the economic system)
- The music industry must be able to profit reasonably from their work
- Musicians must be able to attempt to profit reasonably from their work.

Some interesting conditions the pre-Internet economic system of buying and selling music included:

- Consumers purchased media in the form of records, cassettes, cds, etc., that will eventually wear out unless copied.
- Introduction of cassette recorders that allowed consumers to record music from the radio. This did not prove to be a major detriment to the music industry.
- Bootleg recordings were made from live concerts and distributed across some genres of music.

Now we have the Internet. Consumers can now instantly order Music online, and download Music without having to go to the store. New music bands can post their music online in hopes consumers will purchase the music. Consumers can create their own custom CDs. This scenario greatly increases the likelihood that consumers will acquire much more music than ever before. Therefore the number of music transactions has increased dramatically. People are acquiring many more music tracks than before.

The old rules of purchasing music do not work anymore. Consumer demands are different. Supply has changed. Pre-Internet if you wanted to purchase a song you were often forced to purchase the entire CD or album. Now consumers have the option of only picking out the songs they like, and creating their own custom CDs. A consumer will not consider it fair practice to have to purchase an entire CD of music, if they only want one song. A consumer will not consider it fair practice to pay the same price for a download as the

sufficient time for PriceLine to build a regulatory organization to regulate the licensee's use of the business process and be able to profit from the costs of implementing a regulatory system.

2. In contrast to granting PriceLine monopoly use of its system, our new patent system would only grant a monopoly on the regulation of the reverse auction system. As of six years after Priceline received its patent, PriceLine was English only, and did not adequately support Europe, Africa, or the Far East. Though Europe is currently included in its hotel room choices, only the major cities are included. If PriceLine's business process were patented according to the stipulations of the new patent system described herein, its implementation would be more widespread. PriceLine would also be profiting from regulating its system, and not just from implementing it. Users throughout the world would gain the advantages of the PriceLine system much sooner than PriceLine's current system of expanding its business according to old style patents. Under the new patent system, PriceLine would create an auditing and regulating organization for PriceLine system vendors. This would ensure that an unscrupulous vendor in Africa or the Far East was not using the system unfairly to route the purchase of hotel rooms to hotels of the vendor's choice rather than the agreements made by the vendor with area hotels. The new patent system would also allow for the rapid deployment of new technology by allowing other businesses to implement the inventor's system.

Prior to receiving a patent, or as an alternative to obtaining a patent, software systems that require regulation, can distribute to the world, using the Regulated Public License. The RPL helps emarketplace, operating system, or other software that requires some functionality to remain the same throughout the life of the software. 'Participants' refers to users, vendors, and emarketplace software

cost of a CD. When buying a CD consumers understand the cost that goes into manufacturing the CD, packaging the CD, creating the graphics, and other costs. When downloading music from the web consumers understand the only incremental cost is the bandwidth associated with the download, and the administration of the web site distributing the music. Thus consumers will not tolerate over the long run, paying the same price for a CD as an Internet download.

Consumers will not abide by any industry rules that breaks the consumer's "Universal Laws". One of these laws is that consumers will refuse to pay exorbitant fees for music. Consumers will not tolerate being treated unfairly, and have the power to circumvent virtually any unfair economic system the government and the recording industry implements. Consumers will only use an economic system that is fair. Pre-Internet if a consumer wanted the music of 25 different artists, but only specific songs, the only distribution channels available were:

1) Purchase the appropriate CDs from a store or
2) Record other people's CDs

Now today, if the same consumer wants particular songs from 25 different artists, the Internet has the capability to deliver the exact music the consumer wants. If it takes the consumer 8 hours to search, download, and create the CDs they want, the Internet industry has an opportunity. For a reasonable fee, the consumer would rather spend 10 minutes ordering the music they want instead of spending 8 hours of their time. Hence, there is a huge demand for music distribution that is not being fulfilled.

What is fair to consumers? What is fair to musicians? What is fair to the recording industry? What economic system will keep all parties happy and allow for the fair and profitable distribution of music? Two systems will be discussed. One system is a free market system, and the other is taxation system that was introduced by Dr. William Fisher, III of the Berkman Center for Internet Society & Law at Harvard. The free market system involves recording companies to offer new services over the Internet to create new revenues for their companies. The taxation system involves letting government tax music related items, and paying the musical artists and recording companies from the taxes collected.

In the end, our digital Internet only exists to enable all of us to more enjoy our analog world.

Free Market System

As is often the case with Internet, an Internet based economic system cannot always mature without the proper infrastructure in place. Some of the missing pieces to this musical puzzle is easy to use micro payments and the Web Site Ingredients Act.

The lack of Internet micro payment systems that are safe and secure and whose use is easy and fast and widespread in use, is a tremendous hurdle to many Internet businesses, including the music Internet business. Easy and affordable micro payments will significantly increase the recording industry's total revenue over the pre-Internet music economic system. Pre-Internet the recording industry experienced low volume and high pricing, and with the advent of the Internet, the recording industry can experience greater revenue through high volume and low pricing. But it's pretty scary for an industry to step into new territory. Dropping the price per song will be a difficult task for the recording industry. And the recording industry must identify the thresholds of when consumers will pay for music and related music distribution services.

Consumers will pay for services they feel has value and that save time. Some new services the industry can offer:

- Purchasing one song at a time
- Selecting songs from different artists and creating their own custom CDs
- Purchasing "Track Music" where consumers can turn on and off different tracks, such as taking out the voice, or the drums, or the keyboards. This allows consumers to fill in the tracks using their own voices or instruments.

Let's take a look at a real life example. Let's call our example Newton Phillips. Newton is an expert percussionist, and takes his music very seriously. His collection of music is very important. Over the past 12 months, Newton has amassed over 883 songs from various artists. And it has taken Newton about 75 hours of work to download and create his own custom CDs. Newton has limited funds, and is not able to spend a lot of money exorbitantly on music. Here is a great opportunity for the correct Internet Music Distribution company. For a reasonable price, maybe $50 or $100, Newton would have preferably gone to one web site that had all the music he wanted,

spend one hour or two choosing the music he wanted, and then download it all in one batch overnight. Newton has downloaded 883 songs and it has cost him 75 hours of time to search and download and search and download. Newton would spend about 3 hours per search and download session, and conducted about 25 sessions to gather all the music. Some of the songs were special songs that were important to Newton, like "Byrd" playing in Europe.

So here is the scenario – The music industry can fill Newton's demand for music for $100, or not. If not, Newton will spend 75 hours of his time. If yes, Newton will spend $100 and one to two hours of his time. What does the music industry have to gain? Oh, maybe $100 million of extra revenue. There are probably one million or more people willing to pay $100 for 883 songs.

No copy protection scheme will ever work well. In the end a consumer can always play the music on a stereo and rerecord it digitally. The quality may go down a little, but not significantly. The consumer could then create an mp3 or other non-copy protected format, and distribute the music online. As long as consumers feel they are being treated unfairly through exorbitant pricing, there will be RobinHood type consumers that will circumvent copy protection schemes and distribute music to users all over the Internet.

But if the music industry enticed consumers to purchase a subscription service or utilize micro payments for extra services and products, the music industry would experience greater revenue. And disintermediation will not result. A huge misconception about the Internet is that jobs will disappear. And usually this is not the case. The Internet creates demand for more and more work and more and more jobs. Maintaining the web sites, streaming services, and other services related to the distribution of music, will create more work and more jobs. So the industry will not experience disintermediation.

Another point to realize is that in many ways a lot of music is free to anyone with a radio and a recording device. Though the radio usually does not play all the songs on a particular artist's CD, radio stations do play the more popular songs. The transition will be from relatively low volume and high pricing vs. high volume and low pricing.

Royalty Public Push Agreements and Legislation

In the end, our digital Internet only exists to enable all of us to more enjoy our analog world.

A combination of legislation and Internet Public Agreements can be formed to allow any qualified organization to sell specified copyrighted material by registering with a website, specifying the product or service, and sending in royalties, on sales. These organizations may also be required to adhere to a certain Web Site Ingredients level. A Web Site Ingredients Label will show what level of business process is being followed by a given web site. (This is similar to the goals of the ISO 9000 system of publicly publishing and certifying their business processes which allows for more global commerce.) Music subscription services where users pay fees to download music, will probably be the most wide spread solution. The New Economy has forever changed the marketplace of music.

Music Revenue By Taxation

Under this scenario items related to music will be taxed, such as blank CDs, Internet Service Providers (for the bandwidth used for music downloads), and other musically related items. The total tax will equal the music industry's current size of $13 billion. The taxed money would be distributed to the musicians. The musicians would receive their part of the money according to how many people were listening to their music. As music was downloaded or played on the radio, or the Internet, it would be counted. Under this scenario there would not be any limitations of any kind for distributing and listening to music. Music would essentially be free, and the artists would be paid by government. (Thanks Dr. William Fisher, III). But this tax scenario has potential problems. Just because $13 billion is the music industry's size today, does this mean this is the proper size? And how should this grow or shrink? Musicians paid by taxation may work, but it is likely the subscription services will prevail as the most used music Internet marketplace.

Step 5: Charities

The engine of the Internet is built on marketplaces, architecture, laws, and proper behaviors. An interesting and appropriate metaphor is thinking about how a car runs. The engine runs on gas, which is money in this story. The small bit of oil that makes it run smoothly is charity. Only a little bit of oil goes a long way to make a smooth running engine. This is why including charity functionality on the Internet is so important. Any economic system that does not pay enough attention to charity will eventually experience hardships. Charity is crucial in keeping many economic systems in balance.

Currently, to accept donations nationally in the US takes a tremendous amount of time and money and effort. Usually an organization must complete a 501c3 form for tax exempt status. Then each state in the US requires a different set of paperwork and registration requirements. Often it is best to hire an attorney to help with the paperwork. So a period of time of six months or more is often required to be able to accept donations across several states. Charity will experience more help when businesses can easily accept donations. For this to happen, it is helpful if the Web site ingredients act is passed. It is also helpful if auditing organizations can track donations from Web sites through an automated process, ensuring donations are actually received by the charities. Ideally, people would be allowed to sign up to receive charity, and do such sign ups in real time over the Internet. Once these barriers of entry into donations for charity are erased a typical Internet businessperson will be able to represent their business and at least one charity. A new economy business person who represent their business and charity causes will most likely experience more success than those business people who only represent their own profit centers.

To include charities on the Internet requires the following steps:

- Make the process of gathering donations easy for businesses who want to contribute part of their revenues to charity.
- Enable micro payments so Internet users can easily donate 1 penny to a cause.
- Enable Internet service marketplaces to work well so they can find volunteers quickly and easily. This will also enable people who want to volunteer to find the right charity for them.

Leaving charity out of the loop will only cause increased world tension, increased crime, and increased probability of war. Keeping charity in balance will bring good karma, and enable everyone to experience more prosperity.

Understand the difference between good and bad web sites, and then only work with the good and decent web sites.

Step 6: Distribution of Guidelines
Explain how Communities, Schools, Individuals, Businesses, Charities, and Government should use and not use the Internet

Perhaps the most expensive and time consuming step to move Internet use forward is education. Educating governments, businesses, charities and Internet users takes a tremendous amount of effort. Before the education process begins, the curriculum must first be produced. Organizing the information into guideline books is an important step. Translating the guidelines to various languages is also of paramount importance for quick success.

Guidelines explaining proper Internet behavior are best distributed to people through various media, including Internet text, audio and video, full length films, TV, books, music and, possibly, wherever advertising is found. Each guideline will have a defined audience and a defined set of Internet architecture, behavior, and law areas. Examples of titles include:

OGTIA Local City and County Government Internet Guide
OGTIA Schools and Education Internet Use Guide
OGTIA Intellectual Property, GPL/RPL, Patent, Guide
OGTIA Charity 501c3 and Non-Profit Internet Guide

Each guideline will set expectations of Internet use for an area or jurisdiction. Each guideline will explain how the following areas are to be configured.

Architecture - commercial, private, non-profit, and government architecture.
Law - local, federal, and international.
User Behavior – user roles and education.

Once these guidelines have been distributed appropriately,

people will be able to support proper Internet behavior, Internet laws, Internet architecture, and Internet marketplaces.

Several areas need to be covered in the guidelines. Oneness, reputations, video conferencing, use of audio, security, micro payments, mature economic models, emarketplaces, software version regulation, brokers, secure databases, and Internet banking are summarized. How users need to legislate the Internet, and how these areas interact also needs to be included in each guideline.

Oneness

Oneness is where the Internet appears to be one entity to a user. For example, if a user is searching for real estate, the Internet should appear as one entity. In our example, the user is searching for two story houses on beachfront land in California, and all the appropriate houses should come up on the Internet search irrespective of which Web site has the property listing. What happens today is that users enter real estate search criteria on several Web sites. The user never gets a complete answer to their request. In other words the opportunity to review all the properties that are listed on the Internet that are two story houses on the beach, in California, the user must continually search and search. And worse, the user never knows when the Internet search is complete. Should the user go to yet another Web site and enter in search criteria again? That is an awful scenario, full of repeated search criteria, and a waste of the user's time.

A better scenario is where the Internet user enters in the search criteria once and presto, the Internet comes back with all the answers, the first time, excluding all Web sites that fail to meet the criteria. The user does not want the Internet to return thousands of non-relevant links. The user prefers if *all* actual properties, or where to find *all* the properties, is returned the first time their real estate criteria is entered. To make this happen, very simple architecture needs to be put into place. A user's needs are to enter a search once (not hundreds of times on different Web sites) and to receive all properties available according to their criteria. This innate need by the user will never change. The Internet will *never* work well if each user has to enter

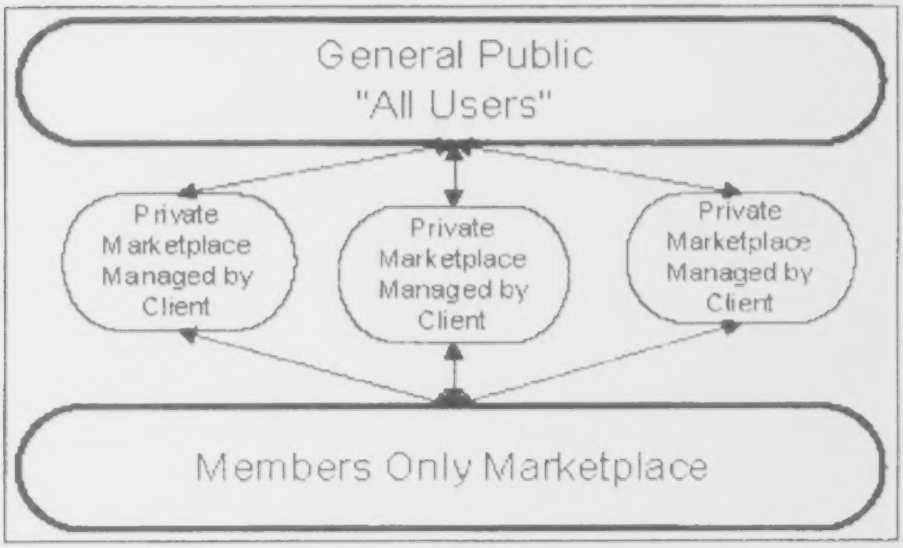
in the same search criteria over and over, and over. Behind the scenes, many simple transactions should be occurring. In our real estate example, the Web site our user is logged into would connect to all other participating real estate Web sites. As the user enters in criteria and hits submit, their request is routed to all participating Web sites via XML. In an accepted standard XML code, there would be data describing real estate as well as commission, and listing fee information. If the user does want to inspect a property, commissions and fees could be paid to the Web site the user is logged on to, as well as the Web site that listed the property selected by the user. Using this kind of architecture would allow each user to enter in criteria once, instead of hundreds of times across many web sites.

What is new and interesting is that a real estate company's competitors will also become its partners. But this is not new in marketplaces. Take a fruit market, for example. If you go to a fruit market and there are lots of farmers selling fruit, the farmers are both partners and competitors at the same time. They have to get together at the same time and place to create a marketplace for buyers. While they are setting up the marketplace and moving the fruit the farmers are partners. While the buyer is shopping, the vendors are competitors. For the Internet to succeed in saving people time, and in working efficiently while offering good customer service, competitors will also be partners.

For those of you who are not familiar with XML, it is an extremely simple way to describe things, so a computer program can match criteria. Here is an example of a request in code similar to XML :

```
<OG_Version value="OGTIA_EventsVer1.0">
  <OG_Event>
        <OG_DateLastUpdated value="12/12/2003">
        <OG_Camp>
              <OG_When>
                    <OG_StartDate      value="07/15/
2004">
```

Members Only Marketplaces and Oneness




```
                    <OG_EndDate value="07/19/2004">
                    <OG_StartTime value="0900">
                    <OG_EndTime value="1500">
                </OG_When>
                <OG_What>
                    <OG_MainActivity
value="Basketball">
                    <OG_SubActivity
value="Swimming">
                </OG_What>
                <OG_WHO>
                    <OG_Age value="9-11">
                    <OG_Gender value="GIRLS">
                </OG_WHO>
                <OG_Cost value="$175">
                <OG_Contact>
                    <EmailAddress
value="john@john.com">
                    <Phone value="212-333-3333">
                </OG_Contact>
```

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```
            </OG_Camp>
        </OG_Event>
    </OG_Version>
```

XML and similar code as above makes it easy for computer programs to find things quickly. It is difficult for a computer program to decipher sentences. It is very easy and efficient for computer programs to decipher simple code that is organized. A computer program may have difficulty understanding the differences between, "I am looking for a sports camp" and "I am looking forward to our sports camp." Traditional old style and limited function search engines like Google cannot understand the difference between who is sponsoring the event and who wants to attend the event, or if an event is just part of white paper. It is possible and easy for the computer to understand the difference between <Camp> and <Attendee>. The trick is getting everyone to use the same codes! That is the hard part. Once everyone uses the same codes, demand will find supply quickly, and the number of economic transactions will increase. And people won't end up seeing "Results 1 - 10 of about 3,290,000". A search that returns too many results is not a very successful search.

Using standard codes allows people to reuse assets. In reusing assets for everyone, one makes marketplaces more efficient. It would not be surprising if eventually bank branches allowed people to make deposits and withdrawals to other member banks. The bank that actually owns and operates the branch could charge transaction fees to customers for cashing checks, depositing checks, wire transfers, etc. This would eliminate the need for anyone to drive by a road where there are four bank branches in a row. Instead, there could be one bank branch that serviced all the banks. It makes sense, doesn't it?

One of my favorite examples of demonstrating the need for Oneness is the current state of searching for a job in year 2000. Back in 1990, it was easy to search for an information technology job. All anyone had to do was purchase a newspaper from a big city, check the classified ads, fax resumes, and that was it! One could have about 100% coverage for advertised jobs. The Internet changed all that. Now a job seeker has to log on to Monster.com and type in a complex web form that takes a very, very, long time. Then they have to do the same with Headhunter.net,

and Computerjobs.com and many others. And they also have to go through the classified ads in the local paper. And after searching for hours on the net and in the classifieds, the job seeker often goes to sleep wondering if they have 100% covereage of the jobs listed on the Internet and the newspapers. And it never ends. The job seeker can look and search, and type all day on the Internet, and they will never know if they are done. Before all of this Internet stuff, a job seeker could look in one place to find an IT job; the classifieds. Now, they have to look in hundreds of places. The Internet has ruined job searching for many job seekers.

Oneness does not imply that all competing web sites have all the same data that erodes competition. The web site chooses what data they will allow their competition to view.

Oneness is not something that is a maybe. It is a requirement for the Internet to work well. Those emarketplaces that implement Oneness will reap its benefits. Users need it. And government can and should undertake many activities to support Oneness. Government can provide the web hosting for XML government approved standards for business communications and trade.

The following simple Oneness architecture can be implemented by smaller communities, such as individual cities, to enable increased transactions at low costs. Here is how it works:

- Each government, which can be local or national, provides web hosting.
- One set of government pages allows local businesses and residents to list their web sites as local businesses.
- Another set of government sponsored pages lists all the standard XML formats for communication. This is where the user can exactly describe the service or product they are seeking to buy or sell, and this can include non-profit and charity items also.

The XML codes ideally will be placed on the same named page on all web sites. OGTIA suggest putting all the codes into an "ogtia.html" page that contains the XML codes and Web site ingredients. It includes any items or services the people want to sell, buy, or volunteer. Security is also important, and another page that requires a userid and password can be used. OGTIA recommends using OgtiaS.html for codes that need password protection. Some information may only be for wholesale markets, and there may be many other reasons why some of the information may not be for public viewing.

Such a scenario would help local business and individuals transact e-commerce. For example, suppose you were looking to purchase a used office chair. A small software program can run that looks at all the Web sites listed on the government page, and looks

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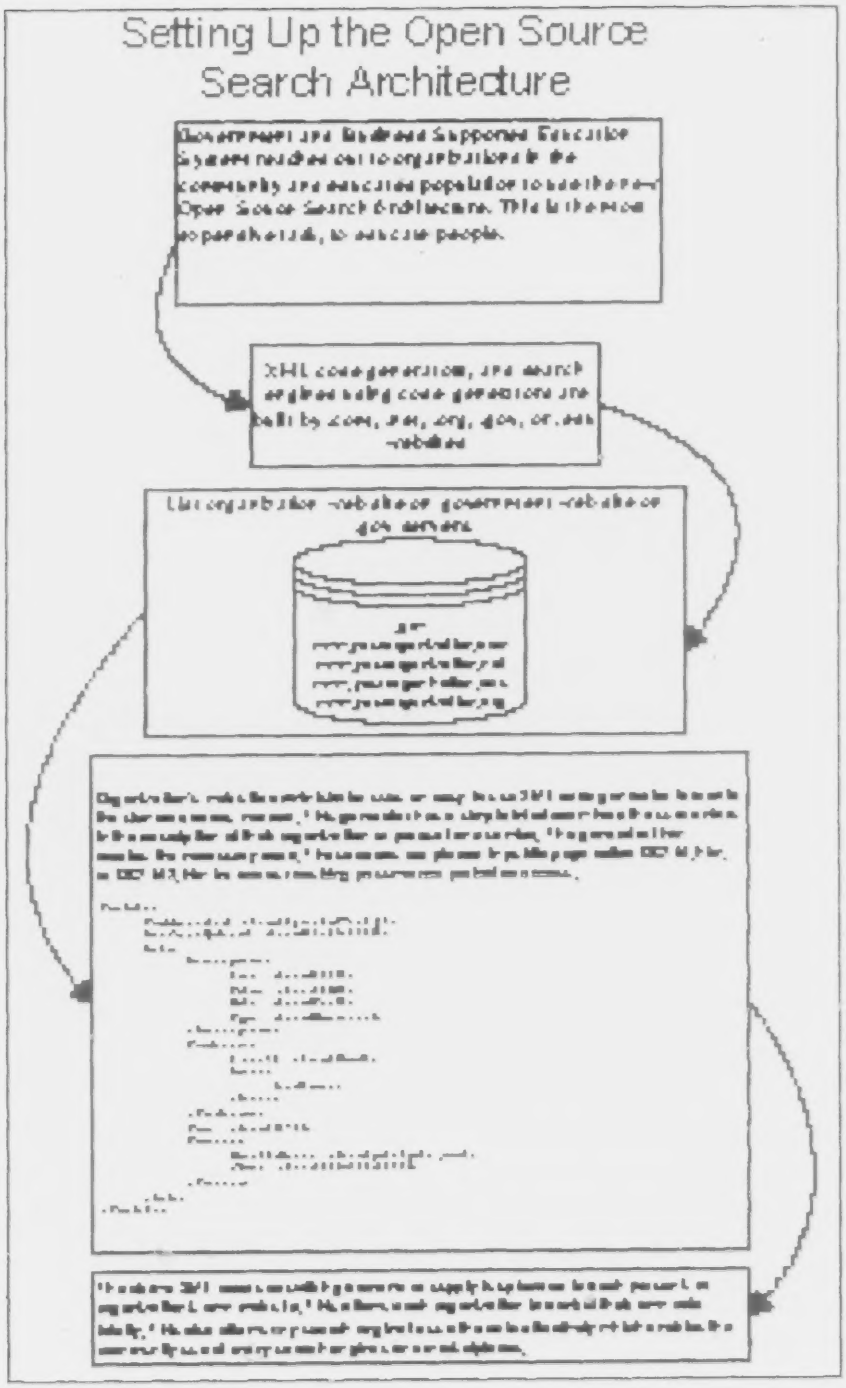
up each Web site's ogtia.html page. From there the program will search the ogtia.html page for XML tags and code describing items and services wanted to buy or sell. In a few minutes, or maybe a few seconds, each user could *completely* search the local jurisdiction for used office chairs for sale. This could be done without all the unbalanced and unregulated monopolies, such as google.com, eBay, real estate emarketplaces, and other Web sites that require repeated data query entries. This one simple architecture can radically change and help local communities. It includes finding volunteers for charity work, as well as finding products and services to buy or sell. This architecture will also bring balance to monopolizing search engines such as google.com. What is wrong with monopolizing search engines such as Google? Google is a fine product and works well, some of the time. Suppose you are searching for cashmere sweaters. The same listings come up every time. So that means if there are 84,000 listings, which there were in my test case, only the first 10 or 20 listings have a good chance to do Internet business. Is that fair? Of course not. Every cashmere sweater vendor should have a chance. The same is true for froogle.com, Google's search engine for products and services. There are 1790 listings, and the same order of vendors comes up each time. This is not a fair marketplace.

The architecture described above can fully support wholesale and member only marketplaces. It is polite for wholesalers to show only prices to the retail stores, and not the customers. Otherwise you have situations where retail customers always know the wholesale prices, which is not comfortable. After we effectively find each other, we need reputation information to make good matches.

Support good sites, good legislation, and what is good for the long term.



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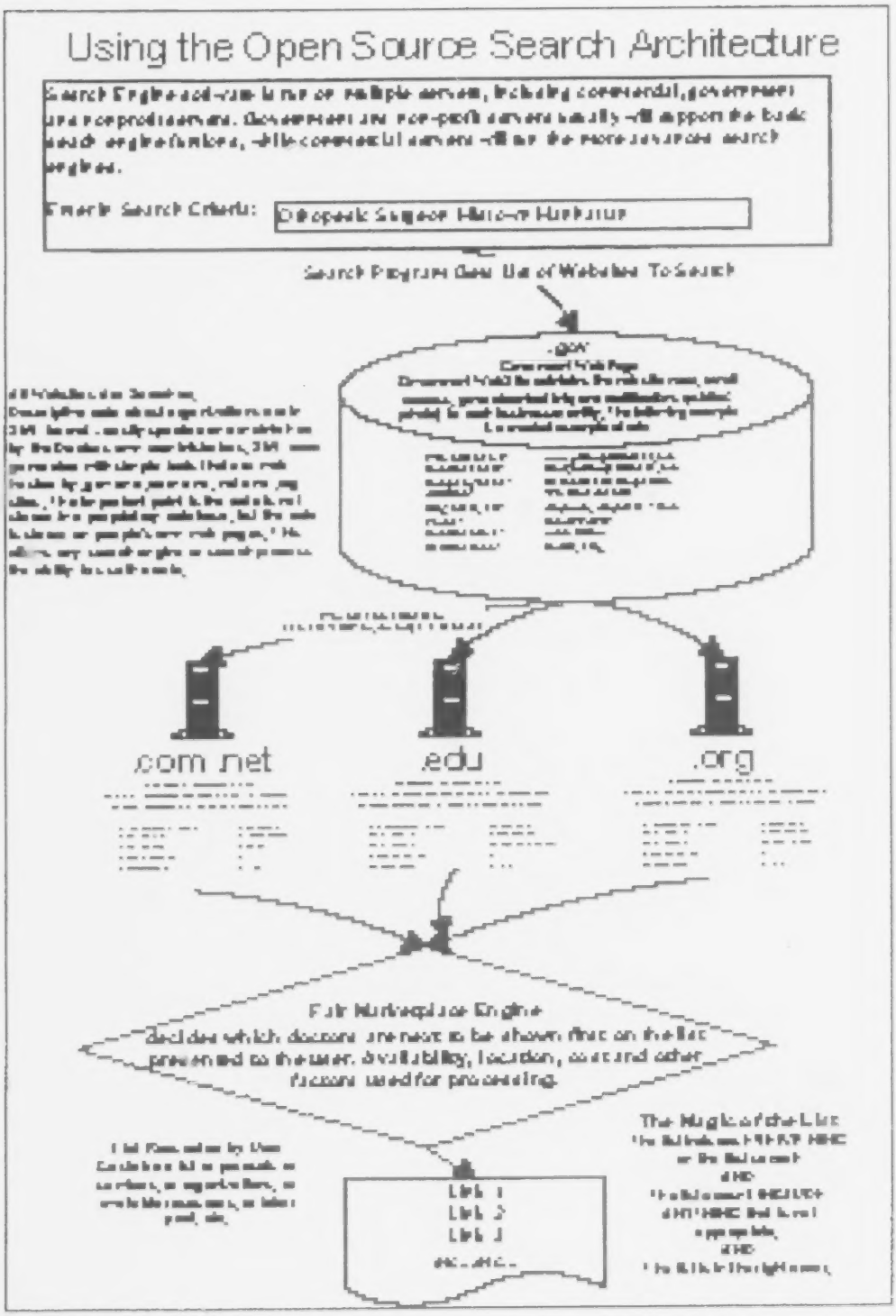

Support good sites, good legislation, and what is good for the long term.

Other Pieces to the Internet Puzzle

Reputations

Reputations are important and delicate. They affect the lives of people in major ways. We are talking seriously big deal in these matters. The reputation tracking industry has a huge responsibility. The reputation of a person or organization in the services marketplace is huge; it will make some people wealthy, while keeping others struggling to pay bills and make ends meet. Reputations are not to be taken lightly. Everyone has a right to attempt to work. Internet reputation companies need to understand there are not really any bad organizations who are seeking work, there are just bad matches. Customers who do not pay on time are better matched with vendors who do not finish their work on time. Clean customers are better matched with clean vendors. Customers who prefer saving money over quality work are better matched with vendors whose focus is quickly doing the work, without spending much time making sure quality is perfect. Customers who try to cheat vendors are better matched with vendors who try to cheat customers. Customers who request perfect quality are better matched with the more expensive vendor who spends considerable time and money ensuring outstanding quality. Computers are able to make intelligent matches, given the correct data and architecture. The Internet reputation companies of the future are very advanced versions of today's credit bureaus. Reputation companies have a much more sensitive and important role in the future than credit bureaus. A bad or incorrect credit rating will prevent a customer from obtaining credit; No, not the end of the world. But bad or incorrect reputation data can prevent someone from obtaining work and stopping revenue. All of a sudden, because of some data, a person may not be able to afford to eat. This is why the correct design of reputation companies is important.

One of the central points of tracking business reputations correctly is to understand the necessity of creating an objective system for measurements. What does "objective" mean? In this respect, it means numbers. Something you can count. There is absolutely no

place for subjective reputations in most Internet marketplaces. There is absolutely no reason to ever read "Joe Shmoe is real jerk, and I wouldn't trust him to deliver my bread." Or, "Pamala Janegirl is a kleptomaniac thief who can't be trusted to even wake up in the morning. She will try to steal the dawn of the day." There really is not any reason for subjective compliments nor comments such as, "Peter is awesome! Does the best job in the world! And all the women think he is wonderful! Get your carpet cleaned by Pete, and even your body will feel real neat!" Or, "This Web development team is awesome. They can build anything in a few days, and to spec!"

First, any reputation quality can be tracked by a number. You can ask anything. For example, "Is the person's appearance attractive?" Then you can score that 1 to 10. You can score anything. "Is the company trust worthy?" Again, you can score it 1 to 10. "How was the overall experience?" You can score that. So anything can be scored. This relieves the need for any subjective reputation tracking. I know there are those of you thinking, "What's the harm in reading a paragraph about an organization's experience"? Well, first of all, it is virtually impossible to organize on a global basis on the Internet. Suppose a company has done 2000 projects, and they have 2000 reputation forms filled out. What are you going to do? Read them all? It doesn't make a lot of sense. And which ones are you going to show to the public? And what about slander? What if some disgruntled person is constipated and is having a real bad day, and then they write up some mean reputation? This will happen all the time. Not only are many people constipated every day, but also lots of people have bad days, and they will enjoy expressing their anger by writing up bad reputations. How then will the reputation company track what is slander and what should be admitted? By reading them all? That would take too much labor, and it will never be feasible. There are so many problems with subjective reputation tracking. However, objective measurements solves all problems. You may be thinking, "Well, through objective tracking, won't disgruntled people still be able to submit detrimental and unfair reputations?" They can, but the smarter reputation tracking systems will be able to easily catch most of

these unfair reputation reports through statistics. Suppose a company always does good work, and their reputations are awesome. Then an awful score comes up. The computer system can throw up a red flag that says to customer service, "Hey, this awesome company has great scores for 200 projects, and then all of a sudden a terrible one comes up. What is going on?" The computer can then automatically check out a few things. The first thing is to check who gave out the reputation. The computer may find out that the customer was Mary Paynenbut who always gives very low scores to service providers. At that point, the computer can make adjustments to the score Ms. Paynenbut has given the service provider. With sophisticated statistics, the computer will be able to be used as a valuable tool by customer service to ensure all reputations are being tracked correctly.

Objective reputations also allow users to understand accurately many reputation scores quickly and easily. As we said, it is impossible for a potential buyer to read through 2000 subjective reputations. Who has the time or interest? But it is easy to read a statistics sheet showing scores on any specific area as reported by 2000 objective reputation forms. Users will be able to ask questions like, "Over the past four years, how much improvement has this organization experienced in the area of client communication?" You may see a total average score of a 5 out of a possible 10. Upon further examination, though, you may see an average score of a 2 the first year in business, a 4 the second year in business, a 6 during the third year, and an 8 during the fourth year in business. Statistics can show so very much, in an intelligent and quick manner. It is up to each reputation tracking business to properly manage and report these statistics.

So, objective reputations are awesome. With numbers, you can reach your goal, which is to generate fair reputation information.

I hope you are on board with objective reputations. Now we will move forward and discuss buyer or client reputations. That's right! Not only are vendor reputations important, but so are the customers' reputations. As any vendor will tell you, the quality of their clients usually determines how successful the vendor's business will be. There are many successful businesses that will only accept a certain

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type of clientele and so reputations on each buyer will be kept. Does this buyer pay on time? Does this buyer habitually shop too much, tying up too many vendors time preparing quotes and proposals? Some buyers shop too much. For example, I recall a meeting with a prospective client about some Web work. After some discussion, I discovered that this prospective buyer already had ten bids for a small project; ten proposals for a tiny project! Further, many of these bids showed a lot of quality work and care, and the pricing was fair. Still this person was asking for more bids!

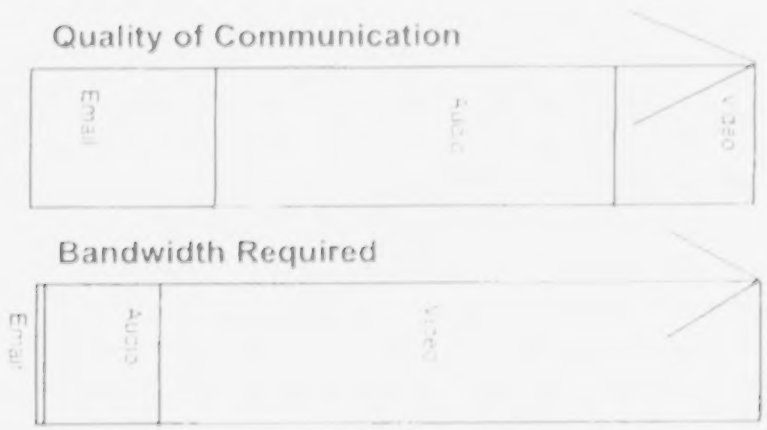
Well this kind of thing infuriates vendors because it is a waste of valuable resources. At some point, the client is not going to get any better pricing nor find any better vendors. As they continue to request more and more proposals for a small project, more and more organizations waste their time preparing proposals. Eventually inefficient marketplaces often have more energy, time, and money spent on proposals than actual work. Actually, the way some companies work (and my preference as well), is to require a down payment before creating complex proposals, because so much work goes into proposals that it is actually is a complete project plan and an important part of the software project. (Often service work requires several stages, where the cost of the entire project is not known until a portion of the work is complete.) Customers who ask for too many proposals needs to be tracked. Clients who shop and buy quickly, with regard for service provider's time, will be the most sought after clients by the best service providers. Therefore, reputation tracking is really for both clients and service providers and for creating great matches.

We turn now to global reputation tracking. Just like the credit bureaus. Reputations will be available from one dot com to the next, no matter where you on the Internet or around the world. Reputations must be shared among companies to accurately track what users are doing and there should be a reasonable 'statute of limitations' on global reputations. Some companies may implement a rule like the following:

We track reputations for our members for 7 years, but we only

give out reputations of the past year to any other outside reputation tracking organization.

A rule like this would keep a bad mark that someone had 5 years ago from reaching out globally, yet still keep the reputation intact should further investigation be warranted. Currently non professional quality dot coms will be doing the reputation tracking, but in the future, there will be Internet companies who will focus solely on reputations. Thus for a while, the reputation tracking systems will not be very elegant. But as Internet business development continues, the reputation tracking businesses will be more critical, and their development will become more advanced. Ten to twenty years or more will pass before Internet reputation companies mature and become advanced globally.



How Will Reputation Companies Charge for Revenue?

How payments are made from one reputation company to another reputation company, or the marketplace, may take on a few various economic models.

Pay Data In, Charge Data Out

Reputation companies may pay for reputation submissions

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from outside organizations and require payment from organizations requesting reputation information. The reputation company will pay for data coming in, and charge for data going out. That is one model. The following is another model.

Reputation Service Provider

A reputation service provider may sign up several marketplaces for an annual fee to handle all the reputation data processing part of the site. The marketplace receives reputations globally on all users the reputation company has on file. Reputation companies may transfer data among each other at little or no cost or the company with more data transfer will get more fees. This is actually a more sophisticated and efficient market than the pay data in, charge data out model. Statistics tracking and complex processing is more centralized, and economies of scale will prove to develop an efficient system. For example, a marketplace would be able to receive the following services from a reputation tracking company:

- Sophisticated processing of statistics and reports, allowing for easy and quick access to needed answers.
- Various background checks, such as public records, credit bureau reports, and reputation tracking reports.
- Reputation tracking customer service and working with end users
- One stop source for all reputations. The reputation company will act as a distribution point for all the marketplace reputation and background checking needs.

Video Conferencing

I envision a world with real world video conferencing. This is a term I coined a while ago to describe effective video conferencing. Video conferencing will not work very well until there are changes to the present video systems.

First, the size of images should be close to life size. If someone is trying to have a meeting with five people, there needs to be enough screen space to show the faces of all five people as life sized. If

there is just one small TV, and each face is the size of a peanut, the video conference will not be effective. Video conferencing calls for large screens. Some people actually believe this to be expensive, but compared to airline tickets, hotels, restaurants, cab fare, and travel time, large screens and the bandwidth to support them are very inexpensive. So in many instances, video conferencing is an excellent travel alternative.

Second, video conferencing needs to be as easy to initiate as a phone call. When participating users properly address these two areas then, and only then, will video conferencing begin to reach its full potential.

How new is video conferencing? Is it a new technology? Not really, it is about 70 years old. The only difference between TV and video conferencing is really cabling and wiring. When TV was first invented, a lot of people thought and hoped television would be used for 'better' uses than sitcoms and cartoons. Lots of people envisioned business conducted over television in addition to educational and one-on-one communication programs. Though initially the costs of one-on-one television may have been too expensive for the public, this type of television could have been made affordable twenty or thirty years ago.

Why have people not put video cameras and televisions in their homes and businesses? Probably because people do not want to be watched and, on the whole, do not like the video concept. Though the Internet may speed up the changing of people's attitude and behavior in using video conferencing more often, it now seems apparent to me that this will take a long, long time. Discovering the right technology is the easy part. Creating the right products and services with the technology is a challenge, but getting people to use these new products and services is very, very difficult.

GRAPHIC INSERTED

It is still a wonder to me why so many people use TV and the Internet for purely entertainment purposes instead of using then to

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save time, make money, solve problems, give to charity, and create wealth.

Audio on the Internet

One under used feature of the Internet is its amazing ability to communicate audio over the Internet. Audio is much less expensive to transfer than video, and offers enhanced communication over a great deal over email or text communications. Look at the following graphics:

The quality of audio communications is much higher than plain email. The statement 'That was great' can be stated in many ways. It can mean something really was great or it could be said in a sarcastic tone, meaning 'that was terrible'. The tone of the statement cannot be heard with text email. If someone is standing in front of you talking, we will assume communication is at a quality of 100%. High quality video conferencing may be at 80%. Audio is probably at 70% as are phone calls, which are very productive, but not quite as good as video conferencing, which is not as good as being there. Text based email is at about 20% - 50% quality. Some emails are never received. Some emails are misunderstood. All emails are delivered without tone. People get the message more efficiently and consistently through hearing *and* seeing the message. By only reading the message, it does not always get through because we cannot hear the tone in emails. Building intelligent voice software that understands and reads text out loud to the user often requires that each phrase be associated with a tone. Together, the phrase and tone create one meaning. A typical phrase can have four different tones associated with it, and thus one phrase can have four meanings. The actual difference in communication quality between video and audio is not that much, yet the cost of transferring video is 20-50 times more than audio, since video files are so much larger.

Hence, the best balance of communication quality and cost of time and money is audio, not video. Sending audio emails, and putting audio on Web pages so people can listen to Web pages and emails, will increase the quality of communication over the Internet for a

smaller fee than video. The costs of having a digital video camera and all the disk space and software needed for the production of video is much more expensive in disk space, time and money than the production of audio, where you only need a microphone and just a little disk space. In the future, more and more Websites will include audio voice-overs that give the user the option to listen to the Web page, instead of reading it.

More on Security

Security is very important. No customer will hand their livelihoods over to a system or marketplace they do not feel is secure so there are two very different issues. One is actually being secure. The second issue is having users believe the system and marketplace is secure. Security must be proven; I always find it odd when I look at a site, and see a 'privacy policy' has been issued. It seems the Web site owner thinks, "Hey, we published our privacy policy, and it's all spelled out in there! So we've got this security thing covered!" I don't think so. As a matter of fact, it could not be farther from the truth. For real security, using an existing model may be helpful. Perhaps security controls similar to government operations may be a good model for companies to use. Let us approach these security issues, one by one; first, being secure.

Being Secure

How do we define what being secure even means? Here is my definition: Security means that data is secure and is available only to those who are supposed to access it, and only during times they are supposed to access it. Who can see what, and when, and controlling access to data is what data security is all about.

Security means:

- Developing strict rules for data access, and.
- Publishing such data rules.
- Internet users have the ability to read and understand a Web

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site's security measures and processes including its auditing procedures.

- E-marketplaces should publish breaches of security on the Web site to notify users the nature of the marketplace; much as people should able to find out the safety history of an airline, they also should able to find out some kind of statistical history of security problems experienced in an emarketplace.
- Ensuring that supposedly secure marketplace data is not used unfairly by the marketplace or system owners to create an unfair advantage.

So what does this all mean? For example, let us suppose kitchenremodeling.com is a marketplace. Suppose people list kitchen projects on the marketplace, and further suppose there are kitchen remodeling construction crews that use the system to find business. Suppose the marketplace is advertised as a 'fair and competitive marketplace'.™ The owner of this marketplace is Bobby Sleazy, and Bobby Sleazy has a nephew in the kitchen construction business. Bobby checks his system periodically to look for projects for his nephew. When a suitable one is entered into the marketplace, he tells his nephew about it, and then temporarily deletes the project profile until his nephew tries to get the business. This is neither fair nor competitive. Other vendors have paid fees to be involved in a fair marketplace. Even though many marketplaces may not engage in this kind of behavior, some will. I guarantee it. We estimate that at the outset, at least 5% of all marketplaces will experience data theft. We estimate that approximately 90% of all marketplaces and systems will not implement proper security measures to ensure no one is using data inappropriately. However, of this 90% we expect only a small percentage of companies will experience data theft. The theft can come from the owners, employees, contractors, Web hosters, software upgrade, personnel, customer service, and all types of people.

This security issue is mission critical to Internet marketplace success. Without it, many Internet marketplaces will not thrive or even survive.

How does a company prove to its customers that their data

is secure? How does a company prove to its customers that their contracts are secure? What type of proof does a company need to convince its customers that their livelihoods are secure?

There are a number of Internet companies whose mission is to exploit customer data any way they can to create profits. With companies out there like these, the job of convincing customers that a company's mission is about helping them is a difficult one. So how does a company convince its customers that a Web site is secure today, and that it will always be secure?

Things that make you go, hmmm. There are many aspects of the Internet that will cause potential customers to stop, or pause. We do not have any concrete answers to this question. It is more a question of marketing than economics but we have done some thinking in this area, and have come up with a few ideas. Here they are:

Banks

If you hook up with a bank and do marketing with them, your marketplace may be able to become associated with the bank's name. Your customers trust banks with their money, so why shouldn't they trust the same banks with their deals? It is certainly an avenue to try and I think it will work well.

Public Publishing of Security Procedures

This is more than a Web page containing a marketplace's 'privacy policy'. This is a list of security procedures the marketplaces claim to follow every day. This type of listing will help, but not convince all users.

Public Security Breach Reports

If marketplaces were to have a respected outside security firm conduct security audits and investigations, and then publicly report on any breaches of security, this would give me confidence that the marketplace is implementing a self optimizing process that will create excellent security.

Testimonials from Customers

If a marketplace has any well known customers that use its services successfully, a testimonial will really work well. The user

could claim, "we trust XYZ Marketplace to close 60% of all of our deals..." Testimonials from the right organization or person will be very helpful.

Those are just a few ideas. In essence, we mention three ways:

1) Associate with a respected bank or financial institution.
2) Public reporting of security processes, reports, and other issues.
3) Testimonials.

I imagine there are many other methods of convincing customers that a marketplace is a secure and trusted place to conduct business. It is easier to actually make the marketplace secure; it is more difficult to convince the world a marketplace is doing its job.

The Magic of the Internet - Collecting Pennies or Micro payments

One of the magical things the Internet will do in the future is to enable the collection of extremely large numbers of idle pennies and amass significant amounts of money that which actually increase the effective money supply. Think about all the pennies people have lying around. Say, three pennies per person, which is not a lot of money, but if you pool the pennies from 100 million people, that is $3 million! That is a lot of money! Enough to start a major organization or enough to start political initiatives! Without the Internet, the cost of gathering the 3 pennies per person is too high to allow this to work but in the near future, the cost of gathering up these pennies will be very low but will increase the effective money supply. In fact, over time, inflation may result due to the increased effective money supply. The government can help stimulate the private sector to use this Internet magic to gather money and create new businesses or jobs. This facility offered by the Internet for collecting and transforming these otherwise idle pennies is very exciting, especially for collecting tips. Users will be able to become extremely powerful by grouping themselves finanically on the Internet. This will bring balance back to today's economy where large monopolies are running rampant and causing economic imbalance. People can be so empowered by

the Internet. Today one person often feels helpless and alone against unfair monopoly pricing, or improper government schooling, or improper legislation. But actually, if people group together on the Internet, great changes can happen quickly. The Internet is not being used anywhere near its full potential.

Old Technology Eliminates Jobs,
New Technology Creates Jobs

Private sector businesses can stimulate the economy by investing in technology that will work, and that will create jobs. The idea that 'technology allows companies to replace labor with capital to become more profitable' is old and out of date. That statement is only true for old technology. New technology will, and does, create jobs, and creates a large need for labor. The difference is where and how technology will be applied. In the past technology was applied to automating factories and systems, mostly in manufacturing. Today, new technology, and the Internet is creating new virtual on-line factories and systems. There is a desperate need for people to run these new factories. More brokers are needed, more administrators, more software engineers, more sales people; they are all required to create and maintain the new technology to be installed and maintained on the Internet. As an example, think about a factory that makes aluminium cans and contrast it with an emarketplace that produces sales. The aluminium can factory will try to produce as many cans as possible with the least labor. Applied old technologies will help the aluminium can factory work with the least number of employees. The emarketplace is very different. One of the critical success factors of an Internet based emarketplace is customer service where, as business increases, more customer service representatives will need to be hired. In one example, technology eliminates jobs, in the other, technology creates jobs. Educating people and distribution are the large costs. Many business owners do not realize how much administrative, marketing, and deal making Internet capacity they require nor do they understand how this work can benefit their bottom line.

Understand the difference between good and bad web sites, and then only work with the good and decent web sites.

Mature Economic Models and Changing Behavior

'Final Economic Model' in this text refers to a mature and balanced economic environment that changes little in its structure. A mature model will not experience major changes because the mature model meets the demands of all parties involved, and these changes have been implemented and tested and tweaked over time. The Internet will help bring Final Economic Models to our world. Some economic models have already matured. Some will take fifty years. Others may take five years. The final, evolved economic model is the marketplace environment; an environment that people of all nations will metamorphose into acceptance and usage over the longer term. The 'final economic model' is discussed often in this book. Strange and unpredictable short-term economic models may exist and even be profitable for a limited time. This book does not focus, nor try to predict the many strange Web sites people will create but focuses on what will eventually happen in the emarketplace, after all the various economic models have been tried and tested. It also asserts that the evolution of the Internet and its infrastructure will not be built according to the whims of the people who have the money and resources to create Internet Web sites. In the long term, simply 'what works' will determine the infrastructure of the Internet. What works can be predicted accurately using good 'ole common sense and scientific analysis.

The E-marketplace's Primary Customer: *The Vendor or Seller Community (not the Clients or Buyers)*

Consider a popular Web site misconception: Building a Web site is for the buyers, the clients, the customers.

This philosophy does not often ensure the building of a good emarketplace. An emarketplace's first and most important customer is not the buyer or the client; it is the vendor. Vendors have been doing business long before the Internet existed, and vendors often do not need to go to the Internet. Many emarketplaces incorrectly design their system initially for clients, and then design for vendors

as an afterthought. This does not build a good, longer term successful Web site and there are several reasons why a customer focus over a vendor focus is improper:

1) Should a group of vendors accept the concept of an emarketplace, they will begin to receive a substantial portion of their revenue from an emarketplace. Whether these vendors make a good living will be determined by the emarketplaces they use. This is very different from buyers, or clients, who usually do not make a living by such participation but who are simply occasional visitors. Take the earlier kitchen remodeling. example; though a kitchen remodeling company will close one or more deals a month, as a customer you may close a deal to get your kitchen remodeled once every seven years. Thus the vendor use is much more than the customers use. If an emarketplace does not work for the vendor, there will be no marketplace. A marketplace cannot exist without vendors. Eventually every emarketplace will have a customer, through advertising, a search engine, or something yet to be developed. If the customer is *serviced* properly, they will come back. They will also tell their friends about the experience. There will always be at least a few testing customers for each marketplace.

2) This is not true for vendors. If vendors do not like the way the emarketplace runs, vendors will not participate. For vendors this is serious business. If a customer's kitchen does not turn out quite right, it will not ruin their life. If a vendor cannot get quality work from its sales and marketing efforts, this will ruin a vendor's business and livelihood. How a marketplace works is critical. For the buyer in this example, the purchase is not a critical factor to the buyer's livelihood. For the vendor, it is their business and their life.

Vendors participate in marketplaces that work, and customers always seek out marketplaces to get what they want. Customers never have in the past, nor will they in the future, create the culture of a marketplace. If you want to buy oil, you have to find the marketplace where the vendors are, to buy it. If you want to buy a book, you have to find a marketplace where vendors sell books. Clients and customers

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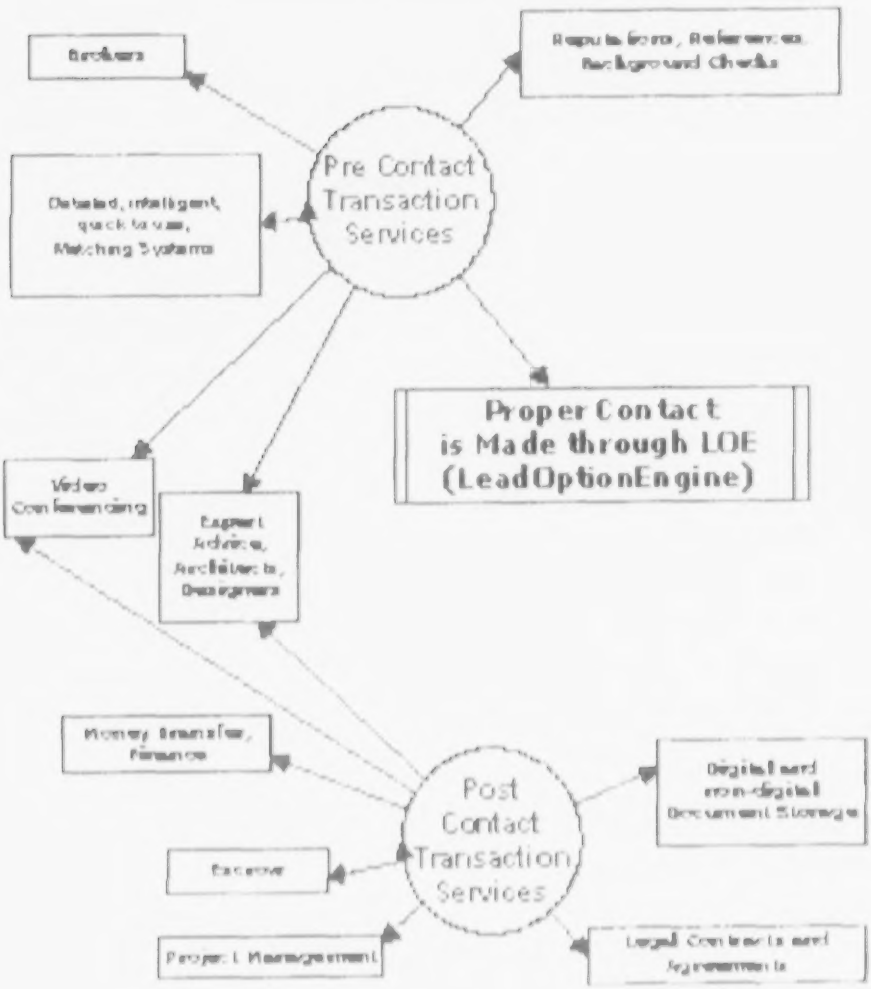
search and choose marketplaces to conduct purchases. Vendors, as a group, create the culture of the marketplace.

The Rule: Design and build emarketplaces to have happy vendors. This will build happy clients and customers.

Support good sites, good legislation, and what is good for the long term.

Understand the difference between good and bad web sites, and then only work with the good and decent web sites.

Non-Commodity Services Marketplace Economic Model Overview



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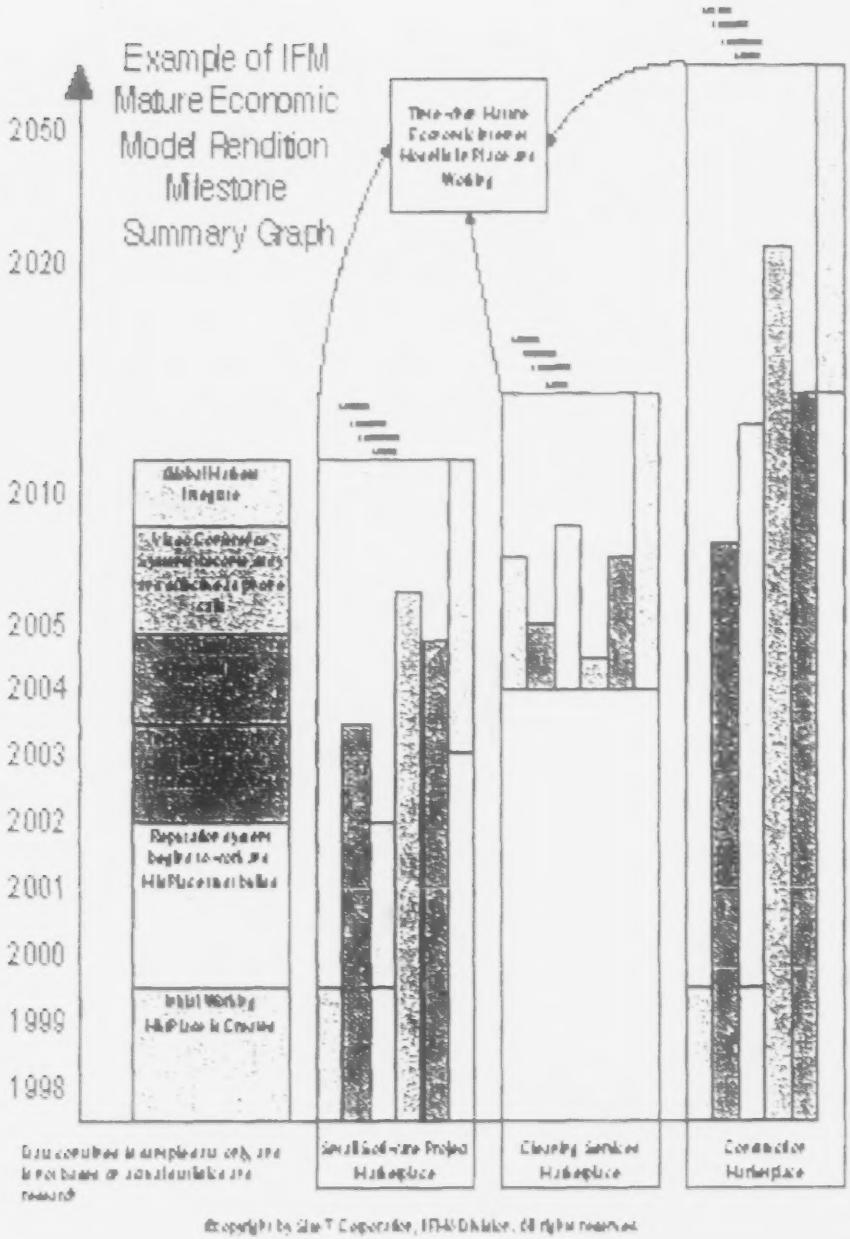

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Software Version Regulation

Software, by its very nature, will always be a monopoly or oligopoly market. Always, and forever. As with other monopolies and oligopolies that are beneficial to society, the software industry requires regulation. It is obvious that when organizations regulate themselves, their actions tend to favor the monopoly organization, and not the consumer. Hence, consumers need some support in the enforcement of fair and just regulations for the conduct of the monopoly or oligopoly.

Why is software always going to befound in monopolistic or oligopolistic situations? The answer is rather simple. There is tremendous value for everyone in a population to use the same software. If we both use the same word processors, we can read and edit each other's files. The Internet is a perfect example of the necessity of how only one software application becomes the chosen one for everyone. Every Internet user in the world uses the same HTML codes. These are the codes enabling us to see the Web pages. Imagine if some monopoly organization used copyright and intellectual property laws in an attempt to make everyone on the planet pay fees to use HTML code? Sounds crazy doesn't it? But that is exactly what Microsoft and many other software companies do every day. They extort money from Internet users. Further, suppose you paid an 'HTML fee' to use the HTML code on your Web site or to interpret someone else's Web site. Now suppose the evil, unregulated, monopolistic organization created an upgrade; and suppose that the upgrade made it impossible for you to see Web pages until you upgraded. Further suppose that the 'HTML upgrade' offered you features you never will use anyway. Then suppose that most people paid the exorbitant fee; that some foreign and local governments figured out what has

happening, and decided to outlaw this monopoly controlled code. This is exactly the kind of scenario software companies put everyone through everyday and precisely what happens to Microsoft users. Right down to the outlaw comment. Several governments and cities in the US, and in South America, have outlawed using Microsoft software in government computers.

If you are going to choose a word processor to type a letter at home, how many choices do you really have? Two, or three at the most? Sure, the skeptics will proclaim there are many word processors 'out there' that run on computers. But basically, if you are going to communicate with others, you will use Microsoft Word, or HTML, and possibly there are some old Word Perfect users as well. Another case – editing video. If you are going to edit video, how many choices are there? Adobe Premier, Final Cut, Silicon Graphics animation software, and what else is there? A few others?

Out of 1,000,000 software developers *or more* world wide, there are only a few software systems in each market. If software was an elastic marketplace with few barriers to entry, would not there be 100 or more systems? If software did not have so many barriers to entry, there might be 100 or more software systems in a particular market, but its not like that. Why? There are not a million best ways to write an algorithm to schedule events. There are a few ways. Therefore, a small group of people get together and write a system and it takes a few years to get it into good shape. The system is a smashing success and lots of people, and I mean lots of people, use this software. So who is going to try to rewrite the system? And why? If a system is already written, and there are not that many ways to do it, who in their right mind would just go off and spend their time (maybe a couple of years or more) and energy rewriting what is already been done, and available. Software is not like writing books. It's not like creating art, it's not like making music. Software is mathematical. If an alian from another planet wrote software to manipulate geometric shapes, it would be written almost the same exact way anyone would write it. This is not true for a painting. For those of you who have never authored software systems, it is interesting to note that creating a software system is

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an endeavor that must be accomplished competently or not at all, and often it must be accomplished with amazing vigor, dedication, commitment, team work, and a drop of insanity. In the end, a system is mathematical. Patenting software is like patenting a mathematical forumla. Using today's philosphies, Einstien would have been able to patent $E=MC^2$. Patenting mathematical formulas seems kind of strange, doesn't it? But that's what the industry and government is doing with software patents, until things change.

People involved in intense intellectual teamwork understand that to bring a complex intellectual concept to life, and to create a system to maintain it, takes a quite a lot of heart and soul and sweat. The energy we, as a human race, have available to create outstanding software systems is limited. When time is wasted on bad work, that time is lost forever. The people writing the software *will not* (because of personal, financial, and other reasons) work on systems they do not deem make a whole lot of sense. Why am I not going to start writing video editing software tomorrow? Even if some investors come with money? Because it already exists. It is already written. From a global view, it would be a total waste of our 'software creation energy' to create a software system that already exists and is operating successfully. So it is OK to have monopolies and oligopolies in software marketplaces. I like 'em, sometimes! But they always need regulation. *No matter what most Americans think!*

There is tremendous value in the entire population using the same software and copying software has almost no cost. It is blindingly obvious one software application will be selected in many markets; this is why sofiware is a monopolistic market. As Americans cling to outdated copyright and intellectual laws and philosophies, the monopolies extort more and more money from users but this tide has already changed thanks to Open Source software, which is free software. No cost, and with source included, everyone is partially protected against the unnecessary upgrade scenario.

Software version regulation is missing. It does not exist. There is little that is more frustrating than working with a client, receiving an attached copy of their Microsoft Project document, their Microsoft Word document, their Microsoft Excel document, their Microsoft Access database document, and not be able to work with most of the documents because I have Office 97, and my client has already upgraded to Office 2000. It is a *crime* that I cannot open all the Microsoft Office 2000 documents with my Office 97. That is not just an expression. By applying laws and legislation *already in place* for manufacturing, this type of versioning by Microsoft and other software companies is illegal. It is obviously immoral and unethical.

I will explain further. Suppose you purchased a GE or Maytag washing

machine in 1998. Those companies must offer parts for their machines for a specified period. For some items, a reasonable period is seven years. Otherwise, the company could sell you a washer, and if it breaks after the initial warranty period, the company could say, "Sorry Mr. Customer, but you have to purchase a new washer because we don't make the part to fix this anymore." These exact laws are applicable to software.

The software community is a global community. That is the way it is. Things that cause this community to break are not the same types of things that break a washing machine. Software and washing machines are different but similar. As soon as Microsoft comes out with a new Office version where the old Office version cannot read the new documents, the software community has been 'broken' and is in need of 'repair'. Microsoft, in this case is the culprit. Their solution is for customers to spend a few hundred dollars on an upgrade. In addition, customers also spend thousands of dollars paying software technicians to implement the upgrade. Then there is the cost of educating people about the new upgrade and many software companies do this as well. What people are required to do is recognize what is going on, and to prevent it. Our economy cannot withstand the huge waste of time, money, effort and aggravation on unnecessary software upgrades that do not improve efficiency but are simply manufactured for the sole purpose of making more money for their respective monopolies.

Database Security

Currently most implementations of Web based databases such as Oracle and MySql have severely limited *internal* security features. Though the databases are secure enough to prevent access from non-administrators, the database data is usually available to administrators. Oracle and MySql authors should build databases where the administrator can be prevented from seeing a user's data. Should a Web vendor choose a Web hoster to host the Web site, the security of the data is always limited to administrator access, which is not secure enough for many scenarios. If the database vendors create a database where administrators are completely restricted from accessing data, and administration of the data is limited to the actual owner of the database, then a really secure system can be put into place.

Banking on the Internet

Banks and financial institutions are in an awesome position to be everyone's transaction center. Many banks already have on-line banking and bill payment

How many proposals can a marketplace afford to write per proposal based on project size?

Number of Deals Per Day	1 deal	1 deal
Number of Business Days	100 days	
100 days		
Number of Companies Bidding Each Proposal	25 orgs	
4 orgs		
Number of proposals	2,500	400
Hours of work Per Proposal	2 hrs	
2 hrs		
Total Hours of Proposal Writing	5,000 hrs	800 hrs
Cost Per Hour of Proposal Writing	$100/hr	$100/hr
Total Vendor Cost	***$500,000***	***$80,000***

The same cost difference can be applied to buyers as well. Buyers have to read through all these proposals as well.

Cost Per Hour of Proposal REVIEW	$100/hr	
$100/hr		
[illegible]urs per Review	0.5 hrs	
0.5 hrs		
Total Buyer Cost	$125,000	$20,000
Total Economic Cost	***$625,000***	
$100,000		

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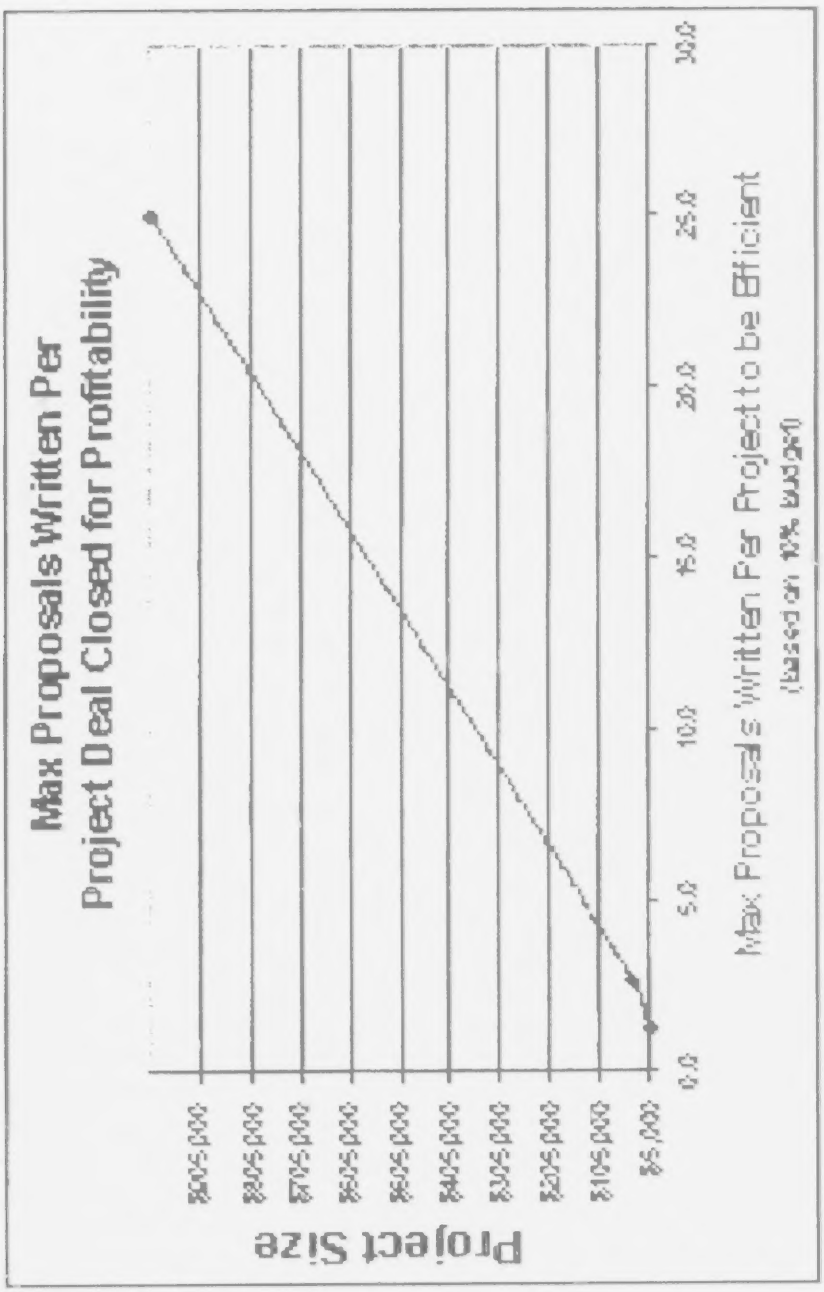

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features on their Web sites. Though some users may be slow to trust the Internet to do on-line banking, most Internet users will eventually use on-line banking. Since people already trust banks with their money, banks have tremendous branding capability. As an example, suppose you were looking for an attorney on the Internet and you found three attorney emarketplaces:

1) e-attorney.com (just an example)

2) Yahoo's attorney emarketplace (just an example, I don't think they have an attorney emarketplace yet)

3) Chase Manhattan's guaranteed attorney emarketplace (this is just an example, they don't have one yet.)

Who would most users trust? I will bet you that over 90% of users will trust Chase Manhattan over the other choices.

Not only will people trust the banks more, but also one Web site everyone will visit every month is their bank. Banks and financial institutions are a core Internet Web site that all users will visit every month. Banks and financial institutions therefore have the branding that is necessary, and they will always have their users logging on, every month. This puts banks and financial institutions in an awesome position.

Banks can still ruin this opportunity. They can ruin it by implementing emarketplaces that don not work but if they are careful, and they slowly implement emarketplaces that work, banks can rule the Internet business transaction superhighway.

Here is an exciting scenario that, in the future, can be replayed and completed within 30 minutes:

1) User (a lawyer) logs on to its bank to pay bills

2) User decides to remodel the kitchen, and closes deal online, through the bank's construction emarketplace.

3) User needs to find work, and does so through the bank's attorney emarketplace.

4) User hires a caterer through the banks catering emarketplace.

5) User needs an expert witness for one of its cases, and hires the expert witness through the bank's expert emarketplace.

Note that one of the key issues here is that the user 'hires', not just 'finds', what they are looking for when searching on the Internet - and do so in thirty minutes or less. This is so very important. Just providing a huge list of possible matches does not help anyone. The emarketplace has to provide guaranteed, qualified and available vendors, and then facilitate the closing of deals in minutes, instead of days and weeks.

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Deal Makers Alive and Well and Needed!

Whether you want to call them brokers, administrators, marketing coordinators, these essential workers are paramount to the success of deal making over the Internet. In discussing the evolution of the Internet, one frequently discussed item is termed 'disintermediation'. 'Intermediation' means broker, distributor, or some link between the organization supplying something and the ultimate customer. The 'dis' part refers to the evolutionary process of getting rid of all the brokers and distributors.

Let us make a thought experiment and choose a product, say, helmets. A distribution Web site could be created to carry many manufacturers' helmets. A helmet Web site could list all helmets including motorcycle, bicycle, water ski jumping, sky diving, novelty, race car, football, hockey, diving, and any other helmet they could find. This ultimate helmet Web site would not actually purchase any inventory at all. This Web site would simply be a one-stop Web shop for all helmets. The service to the customer includes two features. Time - by always going to one shop, the customer would not use valuable time searching through several helmet Web sites. The other service would be comparison-shopping. One Web site could allow a customer to comparison shop among many manufactures.

Disintermediation will eventually reduce the number of representatives levels used to market manufacturers' products. This is true but distributors will still exist. For services, however, it is a different story, and a different economic model. Selling a service is selling a promise, and this is different than selling a product. In many markets, the Internet will actually generate the creation of intermediaries, not get rid of them.

Brokers need to link in non-Internet users to emarketplaces. A broker may represent construction workers, or other parts of the population on the Internet. Workers have the ability of receiving benefits from the Internet, through brokers, such as quickly finding work, without actually being on the Internet. This is similar to the stock market. You may buy stocks, but you do not have to be a broker to participate in the marketplace. It is the same thing with brokers,

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marketing coordinators, or administrators. While people are doing their work, they need someone else to close the next deal for them, and make possible the meeting of supply and demand transacting business.

The Oligopoly or Cartel Site

The oligopoly site is the Web site that does not implement a competitive free marketplace but, instead, gathers a limited number of members, and tries to advertise these members to prospective clients. It is similar to a paid yellow pages phone book, where not everyone is listed in the directory; only members are listed. These Web sites have serious flaws in their system of operations. Suppose a project comes through the oligopoly emarketplace and a hundred vendors are qualified and available. All vendors in the oligopoly bid on the project, and one gets it. Suppose that happens every day; for a hundred days. Do you think you will have a pool of happy vendors after one hundred business days? Many vendors will have created one hundred proposals for nothing. Some will have won business, and others will win very little business, but often not enough to pay for all the proposal writing.

Under this scenario:

1) after a 100 days,
2) at a 100 proposals per day,
3) 10,000 proposals would have been written!
4) At 2 hours per proposal that is 20,000 hours of work,
5) or the equivalent of one person working for *ten* (10) *years!*
6) *There is a better way!*

What if:

1) every proposal was given to the best, most qualified, and most available 5 providers and only 5 providers?

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2) Each project would trigger 5 proposals to be made instead of 100 each.
3) Total proposals for the 100 projects would be 500.
4) 500 proposals at 2 hours each is 1000 hours, or six person months.

There needs to be a balance between the amount of time and money spent on proposals and the amount of time and money spend on the actual work needed.

Now's let us compare the amount of work to be done for a project:

- One half (1/2) person years of proposal work, or
- Ten (10) person years of proposal work.

Which costs less?

An intelligent marketplace can save the proposal writing community in this marketplace about 9.5 person years of work, and at $100 per hour, that would be about $1.8 million. That is a lot of money. A marketplace that directs its group of service providers to spend $140,000 for 100 deals will succeed, where a marketplace that directs its users to spend $2,000,000 for 100 deals will fail. The more efficient marketplace will eventually replace the inefficient economic systems. Think of the difference. Service providers, as a group can spend $20,000 of work per deal, or they can spend as little as $1,400 of work per deal. Which system is going to work?

Proposal Writing Costs for a Marketplace's Service Providers

Using a non-intelligent marketplace that does not create lead value will lead to economic inefficiencies. Usinganintelligent,fair, and competitive marketplace saves money and creates efficiencies.

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	Marketplaces that don't work	LeadOptionEngine (it works)
# of Deals Per Day	1 deal	1 deal
# of Business Days	100 days	100 days
# of Companies Bidding Each Project	100 companies	7 companies
Number of proposals	10,000 proposals	700 proposals
Hours of work Per Proposal	2 hrs	2 hrs
Total Hours of Proposal Writing	20,000 hrs	1,400 hrs
Cost/Hour of Proposal Writing	$100/hr	$100/hr
Total Economic Cost	$2,000,000	$140,000

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How many proposals can a marketplace afford to write per proposal based on project size?

Number of Deals Per Day	1 deal	1 deal
Number of Business Days	100 days	100 days
Number of Companies Bidding Each Proposal	25 orgs	4 orgs
Number of proposals	2,500	400
Hours of work Per Proposal	2 hrs	2 hrs
Total Hours of Proposal Writing	5,000 hrs	800 hrs
Cost Per Hour of Proposal Writing	$100/hr	$100/hr
Total Vendor Cost	***$500,000***	***$80,000***

The same cost difference applies to buyers as well. Buyers have to read all these proposals as well.

Cost Per Hour of Proposal REVIEW	$100/hr	$100/hr
Hours per Review	0.5 hrs	0.5 hrs
Total Buyer Cost	$125,000	$20,000
Total Economic Cost	***$625,000***	***$100,000***

If the information system doesn't tell you who is exactly qualified and available now, then the information system is no better than the yellow pages

The second graph on the previous page is the same information in a different layout and with some different numbers. The first shows 100 versus 7 organizations writing proposals, and the second shows 25 versus 4 organizations.

Are you on board with the assertion that systems that fail to manage the number of vendors presented per deal will not work?

The 'let everyone bid' model is starting to show some serious problems as it grows to include more and more vendors. Oligopolies will most likely resort to taking turns. And after taking turns for while, marketplace analysts will realize that some deals should be going to different vendors who are more of a fit, or to vendors that need the business more and will therefore respond better to the customer's needs. Some vendors who are not that available may be getting projects they do not really want very much, and missing on others that are better fitted for them. A lot of the information that should be included in day-to-day communication is omitted. This is exactly the type of communication the LeadOptionEngine marketplace facilitates for buyers and sellers. Sellers can express how much they want work, and express their preference for different types of project work. A calculated match between buyer and seller will always be better than random matching and leads to better business for everyone.

The previous tables show how an uncontrolled marketplace will not be efficient enough to survive and thrive. RFP and non-RFP systems that do not have some kind of control will produce inefficient markets. A marketplace whose total proposal writing and reviewing costs are maintained at an intelligent minimum level will survive.

The second graph on the previous page is the same information in a different layout and with some different numbers. The first shows 100 vs. 7 organizations writing proposals, and the second shows 25 vs. 4 organizations.

Are you on board that systems that do not manage the number of vendors presented per deal is not going to work?

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The Best Average Software Project Size an E-marketplace Should Target

For an emarketplace to work, BOTH buyers and sellers must have a demand for the services of the emarketplace. This analysis attempts to ascertain which submarket is a good starting point for software emarketplaces. Software was chosen at random. The same kind of analysis can be used for construction, or catering, or some other type of service. Choosing a submarket for an industry is a very an important issue. Choosing the wrong submarket at the wrong time will not work. Choosing the right submarket will create a new well working emarketplace. Some marketplaces will fail because they are choosing the wrong submarket. And as the economy changes, emarketplaces must adapt to service the right submarket. Just this morning (June 19, 2001) the WSJ reported Schwab is now starting to use financial advisors instead of promoting the discount brokerage business. And

this is an astute change. As the low volume of transactions are lowering Schwab's revenue due to a low economic swing, Schwab starts to service another submarket: the growing demand of financial advice. An emarketplace has to be just as astute by servicing the right emarketplace at the right time in the right way.

Assumption:

For a software emarketplace to work well, the emarketplace should focus on transacting software projects of a particular size. $1,000,000 software project emarketplaces will use a different business process than $3000 software projects. Given this, which software project size is best to implement to create a working emarketplace?

Let's assume there are 3 general categories of software size:

- Small software projects (from $500 to $10,000 projects)
- Medium software projects (from $10,001 to $70,000)
- Large software projects (from $70,000 to $1,000,000 and bigger)

Let's Examine Each Project Size

Large Software Projects

Buyer and Seller Demand for Large Software Projects

Large Software Project Buyer Demand

Large Project Buyer demand for an Internet E-marketplace is very low in most cases. It is painfully obvious that virtually no buyer on the planet is going to list their $500,000 software project on the Internet. Such an activity would not be approved by most companies. Vendors are often invited to bid or discuss these larger projects. The entire business process of doing large deals is different than doing small deals. A great amount of trust and track record must accompany each vendor who is a real potential candidate.

If your mind is not trained properly, and highly qualified at the top of its class, then leave the thinking to those that can architect correctly again and again.

The Large Project Buyer will demand a lot of service from its potential vendors. The Large Project Buyer does not want to communicate its software plans to many vendors nor potential competitors. Usually the Large Project Buyer will wish to discuss its plans with only a few vendors and not in a public forum such as an emarketplace.

Large Software Project Vendor (Seller) Demand

Any vendor would love to find a $500,000 project on the Internet without doing any marketing, or investing in sales activities, such as lunch, golf, and talking on the phone. Vendors have a high demand for an E-marketplace for Large Software Projects.

Large Software Project Conclusion

To have a dance, you need two dancers. And for an emarketplace, you need a buyer and a seller. For now, there would only be sellers and vendors signing up for the Large Software Project E-marketplace. Virtually no buyers would show up, so an E-marketplace for Large Software Projects will not work well.

Medium Software Projects

Buyer and Seller Demand for Medium Software Projects

Medium Software Project Buyer Demand

Some large buyers who have smaller projects in the medium range, might be interested in trying out an emarketplace. But they still would be hesitant in risking $40,000 to someone they found at an E-marketplace.

Medium Software Project Seller Demand

All the larger software vendors will not be part of a Medium Software Project E-marketplace. These larger software vendors cannot be profitable if they take on the small jobs. Often the larger software

vendors must have software projects in 200k or 500k an up range to be profitable. All the smaller software vendors would be interested in a Medium Software Project E-marketplace.

Medium Software Project Conclusion

There will most likely be a few buyers, but not many. There will be many, many sellers interested in getting these medium sized projects. This emarketplace has little chance of working successfully right away, but it has a chance.

Small Software Projects

Buyer and Seller Demand for Small Software Projects

Small Software Project Buyer Demand

If buyers believed that an emarketplace could perform and get the work done, on time, and have it optionally guaranteed, many small companies would try an emarketplace for Small Software Projects. And some medium sized businesses would also be willing to try an emarketplace that saves time, money, and offers a good value.

Small Software Project Seller Demand

A lot of smaller vendors (sellers) would be willing to use an emarketplace targeted for Small Software Projects. These small vendors would have a tough time trying to win and perform small $1,000 to $10,000 projects one at a time. But these sellers could survive and even thrive if the emarketplace grouped several of these small projects into one deal, where the small software vendor could close one deal, and have enough work for prolonged periods of time.

Small Software Project Conclusion

The Small Software Project emarketplace has the best chance of profitability on the Internet, as opposed to the medium or large

sized emarketplaces. Both buyers and sellers would show up to the small software project emarketplace. Buyers would have to be sold that the emarketplace is a trusted and guaranteed place to have work done, and also that Buyers would receive prompt, courteous service as well as quality work from the vendors on the emarketplace. It can happen at this time if it's all done correctly.

This analytic process used to determine how to best implement a software emarketplace, can also be used for an attorney, cleaning, catering, or other emarketplace service.

Why U.S. Healthcare Will Never Work Properly

The profit motive or economic profit model does not work for healthcare - period. It works for lots of other markets, but it does not work for healthcare. Adam Smith's invisible hand has a problem in the U.S. healthcare market because doctors are not paid to create healthier patients; they are paid based on completed procedures, treatments and consultations. The invisible hand can work if doctors are paid for the right thing. Doctors should be paid based on how healthy they keep their patients, and not how many procedures they do. If a doctor is treating a patient, and has any bias toward a treatment that affects his profit, then the outcome is clear as virtually all doctors will be influenced by the profit motive at some point in their careers. This is especially true because the associated organizations, such as drug companies, hospitals, and the medical education system, support processes that have profit motives derived from increasing the number of treatments. That this is so is endlessly confirmed and repeated. The entire healthcare system needs to be configured anew. This means probably no healthcare insurance at all. Just a brand new model. An example of part of a solution is to base a doctors pay on the number of patients that are healthy. With doctors paid on performance, i.e. healthier and happier patients (not procedures), not only will the population benefit, but also the system could work. Doctors recommending procedures and treatments should not profit from those procedures and treatments. In some advanced, visionary

healthcare models, the doctor making decisions would be a different doctor from the one performing the procedures.

In addition, the patent process does not work well for many healthcare scenarios. Imagine that ABC drug company finds out that bibb lettuce is really a cure for cancer, and at the same time they also find an new expensive drug called Cdrug, which ABC has patented, which is also a cure, which do you think the public will end up hearing about? They will only hear about the expensive drug and lives will be lost. No one in the healthcare community would spend their time and money investing in telling the world that bibb lettuce can save them, because no one in the healthcare community would profit from it. Only the bibb lettuce farmers would invest time and money to tell the world about its ability to benefit cancer sufferers but no one would trust the medical judgement of a farmer. So the world would never know about the benefits of bibb lettuce. (Do not forget; this is just a metaphor, a story, an example. I do not know anything about bibb lettuce nor cancer cures!)

It will probably take one hundred to two hundred years to get healthcare straightened out. Healthcare is a mess; the road is so full of potholes that the rebuilding of it will not happen during my brief stay on earth.

The Legal System in the U.S.

The legal framework that underpins our law has not changed in two centuries. The procedures and processes we have in place were created over 200 years ago and some of the basic ideals and philosophies will hopefully never change. However, the way in which we define what is legal and what is illegal should change and, in my view, will change, over the next century. All legal decisions should be based on a hierarchical tree where root laws (which include those ideals espoused in the Declaration of Independence and the Constitution) are linked to laws established lower down the tree in much the same manner as the binary tree structure in software. When our laws are re-organized in a similar structure, making judgements and decisions will be much quicker and fairer, with justice more

widely perceived as being done. This will also help rid the world of illegal legislation; illegal in terms of the basic laws of the Constitution. Another area that could receive wider attention is the enactment of timed legislation that contains expiration or review dates. Certain legislation that remains in place temporarily, or is active for a specified duration or subject to economic measurement, with review within a nominated time-frame. Some legislation in this category has already been passed, such as protectionist tax law for the steel industry.

Whenever the world decides to re-evaluate law, it will be an exciting legal era. I have faith that people of all nations will eventually reorganize all laws so they become a more relevant and meaningful guide in helping us to better manage ourselves. I am just not sure when it will all happen.

The time and money that is currently being expended for the legal processes to deal with the nature of life and work in the 21st century work is way too burdensome and cumbersome in many, many situations. Given today's technology and a more relevant framework, our legal system and its processes can be implemented much more speedily, and for far less cost with outcomes that are not only fairer but serve to restore public confidence in, and respect for justice.

If the information system doesn't tell you who is exactly qualified and available now, then the information system is no better than the yellow pages.

Step 7:
Internet Labor Marketplaces

Finally! One of the last steps of the Internet evolution in our time will be the creation of global labor emarketplaces that will actually enable people to find work half way around the world, and do so in ten minutes. This final step will allow people to live and visit in many different nations and continents. The following business case, was completed after the *first* such creation in 1998-1999 of the most advanced fair marketplace of the time at http://www.projectwork.com. Some of the ideas and concepts are the same as those already discussed in previous chapters. Enjoy!

LeadOptionEngine
Business Case:

Creating Internet Marketplaces
for Service Industries
Version 1.0
Last Update August 27, 2000
Service Industry Examples:
(Construction, Legal, Pet Care, Software Projects, Car Repair, Personal Care, Catering, Music and Entertainment, Computer Repair, Expert Advice, Healthcare, Cleaning Services, etc.)
Author: Roger Marx Dray

The following business case explains how Internet service markets should be built and maintained. The services marketplace accounts for over 50% of the Gross Domestic Product in the US. Thus, the Internet can play a major role in lowering marketing costs to match service supply with demand. The document was originally written with a flavor of selling the emarketplace concept to dot com entrepreneurs who desperately needed guidance. During the Internet boom prior to 2000, many dot com entrepreneurs were choosing dot com businesses that would never work, nor help the economy. These people were

trying to create an Internet business that attracted customers, even if losing money, for the sole goal of selling stock in an Initial Public Offering, selling and stealing from the public, to make money, and run. Creating services and emarketplaces will work, and will help the economy. So as you read this section you may want to take your mind back a few years, to the time of the dot com crash when people were wondering what they should do next.

Introduction

The Internet world between 2000 and 2010 will undergo tremendous change and development. Compared to cars, we are in the Ford Model T years. There is so much to be done, and there is so much not done. Some people often sound like the patent office clerk back in the days during the last century when someone declared, "We are not taking any more patents! There is nothing left to invent!" When it comes to software, so many people think "everything" is already written! When in fact there is so much to do virtually anyone can start developing in new areas and break new ground.

As we get into the LeadOptionEngine we must also address how to create a long term profitable business on the Internet. Many Internet businesses today are not driven to create by a sales process, or the natural needs of supply and demand in the global economic marketplace. Many Internet businesses are driven by investors. These investor driven creations turn out to be not very accurate in meeting the demands of its customers and often end up in an Internet businesses that will not work. Focus is frequently on exit strategies and going public, not meeting customer demand, or creating a long-term successful strategy. Economic analysis should be the one and only basis for the guiding light on decisions as to the set up of Internet businesses.

One major area understanding lacking in much of today's investment world is that one successful economic model and business plan does not comprise one only dot com, but several. Frequently an investor will envisage a good focused business translating into one dot com. However, many dot com ideas and ventures will not prove

successful, because the rest of the Internet is not yet sufficiently developed. For these economic models to work, several dot coms must be created to work together. To understand, I like the "coming to America during the 1600s and 1700s" scene. Suppose you arrived in America during that time, and suppose you wanted to be in the food distribution business. You wanted to transport food from California to New York, and that is the business you wanted to be in. Fine. Since there was no railroad, however, you also had to be in the railroad business, because you needed a railroad. Railroads need steel, so you needed to also be in the steel manufacturing business with the end result that to transport food, you would have needed to be in several businesses. That is what is happening with the Internet today. Critical Internet businesses are missing, preventing the completion of some economic models. In further complication of matters, necessary government involvement for the passage of legislation to create a crime free Internet is not happening.

There are several myths about creating profitable businesses on the Internet:

Myth 1: Be very focused

One recurring idea among some supposed "knowledgeable" investors seems to say "Please focus on one dot com, one company, and with very small focus." They claim that focus is necessary to create a successful business. But guess what? To create an economic environment that works on the Internet that works, you may have to create 5 dot coms, and run each as an independent business. If you wait until the rest of the world creates everything for you, you may wait a long time, and you may be very late in Internet business model creation. Customers will never care whether you are focused. Their only concern is obtaining the services they need at the level of quality they demand, in a crime free environment.

If your mind is not trained properly, and highly qualified at the top of its class, then leave the thinking to those that can architect correctly again and again.

Myth 2: Attract users and you will be successful

How many Web sites attract millions of users but are unable to turn a profit?

I am not going to list here the many Web sites that fall into this category but there are lots. Finding users is one thing. Creating a profitable Internet business is something else. Virtually anyone with venture funding can hire expensive advertising firms, spend lots of money, find users, and even obtain revenue. But can they make more revenue than their costs? Often this is the hard part. (Originally this paragraph was written before the tech stock crash of year 2000. It took a crash for people to realize that Myth 2 is actually a myth.)

Myth 3: Building a Web site for a business you are NOT yet in, but where none exists, is a good idea.

Since 1995, I have always thought that if you create a Web site for some industry, and you were not in the business, that you are basically creating a Web site for free for the other companies in the industry. Most software costs are in design so if it costs you $20 million to create a wiz bang Web site that is new, it may take only $20,000 to recreate it by a competitor after reviewing the original. Before the Internet, proprietary systems could remain proprietary. With the Internet, just looking at the way a Web site works will enables competitors to use ideas and concepts that might have originally cost millions of dollars. That is why I was never interested in creating a Web site to transact books, or sofas, or kitchenware. I was not in position to be in those businesses. If I were to create such a Web site, I would have collaborated with a sofa manufacturer, or a kitchenware manufacturer, or a book publisher. Eventually everyone will have equivalent Web sites, so how do you make money?

One way you can make money is by doing deals on the Internet. Doing product deals is very competitive. It is a great market, but you do have to be well positioned. Another way to make money, is to find work over the net, or to broker work, between service provider and buyer. This is where our engine comes in. Our engine requires more

than one dot com and this is where we have to build our Internet City.

One of the most powerful ways the Internet can make money is by lowering the cost of individual transactions and be able to charge very little money to a lot of people. Imagine a day from 100 million people. That would be $1 million a day!!! I think in the future that those types of things will happen. There are ways to make money on the Internet, and it is not all about selling products.

Section 1: Evolution of the LeadOptionEngine

When I set out to create the software for an economic system, I tried to create one that will live in the long term. I never would have written software with dates limiting the functionality to the year 2000, for example. I write to solve long-term problems. That is less work for me, and more time to barefoot ski, or play hoops. I usually create the system so it works in unrestricted ways. I can often foresee the high-level business changes that will occur, and therefore create a living system that will survive without being rewritten. Again - more time for soccer and running in the woods.

And so came my challenge at the beginning of 1999: create a marketplace to transact services. Seems so simple, doesn't it? People buy thousands of dollars of products over the net; right? So isn't services just as easy?

The answer? No way.

Why? People are going to use the same processes in conducting business as they always have. When you buy something, you check out the product, price, and delivery options, and you order. Putting mail order catalogs over the net is technically no big deal. Even getting consumers to use it, is easy. All the mail order catalogs did that for us decades ago. How many people did you know who had lots of catalogs and did virtually all their buying via mail order? I knew a few. Has the Internet changed their habits a lot? No, not much; a little better service, but they have been doing their shopping at home for decades.

Now how do people do a service deal? Is it service description,

price, and delivery? No, far from it. Who wins project work, is in fact, not based on price at all. When looking for an attorney did you review several attorneys, ask each one, "How much for a will?", and then hired the one with the lowest price? Doubtful. And so the same with the remodeler who provides you with a new kitchen, or a new pool. Your concern is quality, delivery, and *then*, price must not be too high. So price is often the least important factor. Often if someone puts in a low estimate, people often think that the quality of work must be poor if the price is so low. What to do?

Start at the beginning and mimic society's way of doing business.

Here is the deal:

1) Find three to five qualified and available vendors.
2) Check references, check quality of work, check backgrounds
3) Communicate with them, and get a comfort level with each. What the service provider provides should match what you want. A balance of speed of delivery, quality, and price should match the desire of the buyer.
4) Negotiate, and come up with an agreement.
5) Transfer money, start the project work.
6) When the project work is completed, people usually report to others how happy they were with the vendor.

That is pretty much it. Whether you want a new shower for your house, or your business needs four new global Web sites, the process of doing the deal is pretty much the same. However, if it is that simple, why did so many service emarketplaces (such as $65 million invested elance.com) create systems that will never work well in the long term?

Let's start with number 1:

1) Find three (3) to five (5) qualified and available vendors.

Want to find someone to remodel your kitchen? Traditionally, without the Internet, this would usually take one to three weeks before

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a deal closes. First, you have to call, network, and then find some companies that are available to do the work. Availability is the key. Someone who is busy will give you a high price; someone without any work will give you a low price. Qualifying is also very important. Does the company specialize in $5000 to $10,000 jobs? Or $30,000 to $40,000 jobs? Or more? And how will they work? Will the crew come every day until it is complete? Or will they come and just leave their tools for a week, and then come 2 days a week until the job is completed?

There are a whole lot of variables. When you want to buy a product, such as a book, you do not have to go through all this.

I set out our goal as being able to close a service deal for project work, in under ten minutes. This seems to be a reasonable, yet very difficult goal. The Internet, with all its power, and communicative ability should be able to find three to five qualified service vendors instantly for any buyer. So imagine for a minute. You go to your computer, log on to the Internet, and in sixty seconds you have requested what kind of project work you need, and the computer has three faces available on the screen waiting to talk to you, show you their work, so you can close a deal in ten minutes. That is the idea. You communicate with each, check them out, do everything that normally takes from one to three weeks, do it all in ten minutes, and close the deal online. Everyone knows this will happen. We think we have the most natural way, and the way everyone will evolve into in conducting these types of transactions. But such methods are not yet being used.

So how does it work? Suppose there are one hundred qualified kitchen remodelers in your area. The LOE will communicate with these remodelers on a weekly or daily basis to determine their availability. And their availability is naturally determined by their LeadOptions (we will get to that in a minute). Of the one hundred kitchen vendors, forty who could use some work and forty who are also available. Suppose the other sixty are too busy to quote on any more jobs. Should the computer system send all forty to you? Absolutely not. Remember, for this to work, you have to mimic the real world.

If your mind is not trained properly, and highly qualified at the top of its class, then leave the thinking to those that can architect correctly again and again.

No one would ever want to communicate with forty different kitchen remodelers. Everything must be in balance. Suppose you were one of the kitchen remodelers. Would you even bother to spend your time to give a quote on a small job where the buyer was going to get forty quotes? Probably not. So just sending over all qualified and available vendors will not work. So which ones do you send over? Well you can group the forty on a first come, first serve basis, and just give the next three kitchen remodelers the lead. But the first come, first serve method does not solve all the problems:

_ How many leads per company?

Suppose one company has 90 employees and can handle closing 10 kitchens in a week? And suppose Joe Doe up the street does kitchens by himself and can handle 1 per week? How many leads should each company get?

As you can see, right away, this process cannot be simple. It is a complex problem. What other problems are there with a 'First Come First Serve method?

_ First Come, First Serve doesn't track who is available.

_ First Come, First Serve doesn't allow buyers to express how much they desire the service, or how desperate some providers are to find work.

Now, what if we created something called a LeadIt™? If we gave out limited quantities of these LeadIts to users? And then allowed each user to express their desires through these valuable LeadIts? This is basically a lot like paying for leads. The process is to allow users to express their desires by paying for leads.

Paying for the lead:

1. Helps service providers express how much they really want the lead, and hence shows their availability and desire for this particular job. It allows service providers to express how good a match this is for them, and how much they want the work.
2. Allows the Web site marketplace to make a small transaction fee for creating this whiz bang cool system, keep it going, and pay for brokers to help conduct transactions.

If the information system doesn't tell you who is exactly qualified and available now, then the information system is no better than the yellow pages.

3. Help force correct availability information to be transferred to the buyer.
4. Create a fair and competitive marketplace where any qualified vendor can get work.

The world is a competitive society, and building a fair, and competitive marketplace is what the world needs in a marketplace that will work for the long term.

It is not about "selling leads". There are Internet companies that sell leads on the net. They are a source for leads and they resell their leads to as many people as there are willing to pay for them. This is not the case with the Lead Option Engine. The Lead Option only gives this Lead out to three people (or more, depending on the parameter market as set by the size of the job), and hence creates a great deal of 'Lead Value'. Further, this lead is qualified. They want to do business with a company just like yours, now; ***right now***. No traditional 'Lead Bank' offers this kind of service. None. 'Selling Leads' traditionally means using a shot gun approach. Get some people who may be interested, and hit them with direct mail and phone calls. That is not what this is about. This is about closing deals in ten minutes.

I also think that the ways people will evolve in working with the Internet will follow a natural path that will not be determined simply by someone's new business model. People will test and try different methods, and only the natural, most sensible methods will work. For services, I think this path is the LeadOptionEngine. I do not think there is another way. If there is, I am the first who wants to know how it will work. To fulfill the requirements of closing a deal in ten minutes and creating a fair and competitive marketplace, the Lead Option, or a variation of it, is the most balanced way. The great thing about it is that it keeps everyone happy. The buyer is happy, the service provider is happy, and the transaction service vendor is happy (we will get to them later).

Before we get to the LeadOption, we have to qualify the service provider or buyer. The market works both ways. All kitchen remodelers may be booked for work for weeks, and the buyer could

be the one who pays for the next look at a qualified and available kitchen remodeler.

So how do we qualify? Easy - just give the customer what they want. Do not give them more, or less, simply precisely, what they want. There are two pieces to the matching puzzle. The first piece is the project itself. How big, what type of work, when it is required, and so it goes; on and on. The second piece is the organizational profile. Each organization has a personality. The size of the organization in employees, part-timers, and contractors is good to know. How long has the organization been in business? What type of work do they do? Is it quick and on time? Do they focus on being inexpensive? Do they focus on quality? There are no bad vendors or buyers, just bad matches. That is a very important concept to grasp. A terrible kitchen contractor who is dishonest, and does poor quality work, but is really inexpensive, may be just the perfect fit for a buyer who is terrible to work for, dishonest, and always pays late. They deserve each other. So if you do get into this business, be aware that everyone has a right to live and work, and that there are matches for everyone. In the marketplace you create you may not want any 'low quality' service providers. If, so be sure you do not have any 'low quality' buyers either. Keeping happy service providers, the buyers' vendors, is as important as keeping happy buyers. The service providers will be the group that makes a living off your marketplace.

The way the LeadOptionEngine works, everything is now matched through a 'ProjectProfile'. A buyer describes the project work they are looking for and so, too, does the service provider. Such an approach leads to intelligent and more exact matching than would result from only an organizational profile, as is the case with most other engines on the Internet. Let me explain. I will start with a picture (see graphics on previous page).

Most other engines would ask the service provider one set of questions. That is a problem. Suppose a vendor is looking for software work and they want to get project work that involved Oracle and e-business engines. If they were to use the 'Less Intelligent Way', the Web site marketplace would display several pages of questions

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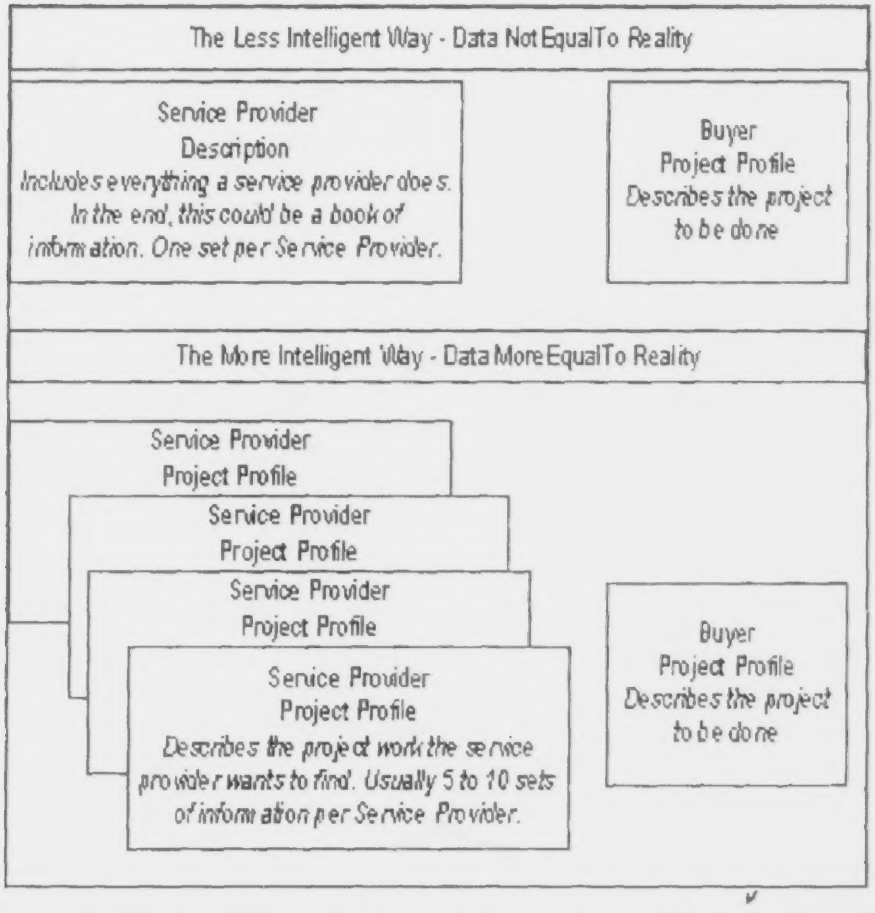
about the vendor's company; essentially the company's resume. In the company resume, most individual people would describe everything they had ever done, so they would be included in all types of searches and supposedly increase their chances of getting work. That would include about 20 areas unrelated to what the individual was really looking for right now. If a company was very small, they might even include everything each person is qualified to do. They could include water ski instruction, awning installation, and software engineering. Suppose, for example, that a software engineer wanted to get project work for one week in the summer, involving water skiing. This attempt to try to match one project to an entire resume does not reflect reality. What reality says is that a person wants a particular project, with particular parameters, and they want this project this month. Next month they may be looking for something else. Not only that; this month, they may be looking for three or four different projects. In using the resume-to-project method, the computer is therefore trying to match oranges to apples. It is trying to match an organizational resume to a project. It does not work well. Why? Well you will never have a good match percentage. Since our organizational resume is very large, any project we do using this method will only have a 10% to 20% match. If I wanted an Oracle project but listed the following: Oracle Database Administration, Cold Fusion, Tcl/tk, PHP, Peoplesoft, Oracle Applications, Java, Web Site Design, audio and digital photography, that would be ten different things. Virtually any project that comes in will most likely only match with one to three items. A 'perfect' project for me will only match 10-30%. Not a very high number. This brings us to the 'More Intelligent Way'. Here we match desired project work with buyer's project work. Here you will normally have 70%-100% matches. The service provider tells the marketplace what kind of project work they want, and the buyer describes the project work they need to be completed. Using this method, the computer quickly and accurately matches up service providers project work desires with the project work described by the buyers. It works very well.

Hopefully, I have effectively communicated to you how our

ProjectProfile system works. If you would like to see an Information Technology example, go to www.projectwork.com but you will need to bring your imagination with you. This same approach can be used with construction, aviation maintenance, personal care; anything that is a service.

Included in our matching engine we have added two very important items, the 'Mandatory', and the 'Inclusive' buttons. The mandatory button can be used on any keyword. For example, if you only want matches where the word 'kitchen' is used, you only get those matches. Even if a match has a 90% match, if 'kitchen' is not included, the match will not happen. This adds tremendous value to



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the Lead. If a customer goes to a marketplace, communicates what they want, and then does not get it, guess what happens? You just lost another customer, and the world has gained another believer in the idea that the Internet will never work. Inclusive is more of the shotgun approach. For example, you may want anyone who uses the keyword 'Assembler', regardless of match percentage. This is helpful if only a few organizations possess a rare skill. Today, there are fewer organizations that want to do 'assembly' programming work, and a company looking for that kind of work would probably like to find any organization that is willing to do assembly, even if their focus was something else.

So, in our design, we now have:

- Descriptions of wanted project work by service providers
- Organization personality of the service providers
- Descriptions of wanted project work by buyers
- Organization personality of the buyers

And we may have:

- Buyer's preferred service provider organization personality
- Service provider's preferred buyer organization personality

We also have who is available, partially through constant communication, partially through reputations, and partially through the LeadOption. That is a great deal of information from which to make deals happen quickly.

Let us explore availability. I can contact you and find out if you are available. That is one way and we do use this method. Another is through the reputations route. If a service provider has been using a marketplace several times, we can track if the service provider is actually available every time we present a lead to them. So, a buyer can request only those service providers who have a certain score in the area of 'Claimed Availability'. This helps separate those service providers who always claim 'We have resources to handle another job' when in fact it is not true. The same type of reputation follows the buyer. Is the buyer the real deal? The third way to track availability is the LeadOption. The five key LeadOption fields are described below.

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Example

Number of Leads You Want	5
Maximum LeadOption Amount	$25.00 (can be $0)
Start Getting Leads Date	5/1
Expire LeadOption Date	5/8
ProjectProfile ID	4534

This LeadOption is tied to a ProjectProfile already created. It is saying that this person is willing to pay a maximum price of $25 per lead for matches to their criteria. Further, this person wants 5 leads. That means the most this person will pay is $125 for 5 leads. Expensive, you may think. If the person closes a $20,000 deal in 10 minutes, $125 is ultra inexpensive. That is obvious. The price of $25 is a LeadOption amount that the user has chosen; like stock options. Prices paid are market prices. If $11 is enough to get a lead, only the market price is paid as determined by competition. If all others are willing to pay $10, this LeadOption would only pay $11 for that lead. When the marketplace first opens, most users will enter in $0 for the LeadOption but as the value of the leads increase, and the users understand this value, users will be willing to pay for leads. When supply equals demand, most Max LeadOption Amounts will be low. When supply is less than, or greater than demand, Max LeadOption Amounts will be greater than zero.

The user controls the start date, but the expiration date is controlled by the user and also by the marketplace. The administrator of this system may decide that all LeadOptions will expire in 7 days, and that all users must reinsert another LeadOption every week. This helps the availability question a great deal. If an organization obtained project work the previous week, they would not reinsert the LeadOption for the following week to get more leads that they would otherwise pay for so natural incentives are helping the marketplace. Expiration dates can be limited to any amount of time from one minute to one year. The maximum expiry date will vary depending on the

industry. Pet walking sites might use seven-day expiration while a software marketplace might implement a four-week maximum.

The LeadOptionEngine has three powerful built in incentives for ensuring service providers are available: the LeadOption, direct contact, and reputations. This is better than searching Web sites and getting over 700 possible business partners, some of whom are not good matches, and who may not be available. That is what happens to me virtually every time I go to the Internet and try to close a deal. With the LeadOptionEngine you get a few qualified and available service providers, and the entire transaction is monitored and managed to ensure everyone gets what they need; all in ten minutes or less.

Again, if you are thinking that LeadOption is selling leads, it is and it isn't. It isn't like selling leads the old way. It is selling a lead that has a good percentage of closing in 10 minutes. That is a lot different from buying a thousand leads, and then mailing and calling them for weeks to find out who wants what you are offering.

The LeadOption works both ways. Both buyers and service providers must fill out the LeadOption. Buyers have an option to pay for the next service provider that comes available as well.

Another feature that we have implemented in some service marketplaces is the 'Web ring'. If someone wants to do business with only with a specific and defined group of organizations, our system does support Web rings. For example, take the problem of creating a pet walking site in Manhattan. You do not want criminals to steal your pet or your wallet so certain groups of people may form a Web ring and the Web ring will include pet walkers, and clients admitted to the group by invitation only. The LeadOption still works as described, but is restricted to the Web ring, or gives a Web ring, or group of Web rings, priority.

The rest is actually quite basic. Now that contact has been made, the buyer and service providers get together to close the deal. Let us look at number 2.

2) Communicate with the vendor

This part will really explode when video conferencing is

widespread. This is not required for the system to work in all markets, but in some it is necessary. How great would it be to be able to talk to three qualified and available vendors in ten minutes! You could be an impulse buyer even when it comes to pools! Or having a party! Get a band, caterer, cleaning crew, and pet sitting, all in ten minutes. Other communications include chat rooms, Internet phone calls and, of course, video conferencing. For the system to work well, when the time comes that video conferencing is as easy as making a phone call, we think that Internet service transactions will increase dramatically. Now we move to number 3.

3) If you like what you communicate with, it is probably time for due diligence: check references, past work, and the like. So online you could view the kitchen some company completed last week, and ask last week's customer how happy they were. You could check the objective reputation tracking system that is included in the LeadOptionEngine. Here you can check backgrounds, credit, references, all types of research per service provider and buyer. Buyers will need qualification by service providers as well.

4) Negotiate and create agreement:

Here we suggest that the marketplace have some industry acceptable agreements available for download. Digitally signed agreements can then be stored for long periods by the marketplace. Our system has a secure document storage section, where users will be given permission to view or download a document. If you create a document, you have control over who has permission to see it.

5) Closing the deal:

Now, you have a deal. Often to close, you have to transfer a deposit amount to the service provider. This can obviously be done over the Internet and money is transferred electronically during the ten-minute deal.

6) After the project work is completed:

The service provider and buyer both must fill out the questionnaire, and the reputations of both parties are amended to include the latest job.

7) Other options:

If the information system doesn't tell you who is exactly qualified and available now, then the information system is no better than the yellow pages.

There are other features such as escrow, broker, scheduled payments, and project management services. An escrow agent can be assigned to the deal. A broker will often make deals for buyers and service providers. Project management software may be available to allow buyers and service providers to track and manage the deal. A mature and well-financed emarketplace will be able, through some financial vehicle like insurance, to pay for deals that have gone sour and improperly cost people money.

That's the process; the above scenario above not include market-to-market overflow resolution, wholesale, or broker only markets, but we will get to that later.

- What about this Internet City thing?

  These are some of the dot coms we would like to see:
  - VideoConference.com
  - Reputation.com
  - MoneyTransfer.com
  - BusinessAgreements.com
  - DocumentStorage.com

  just to name a few.

But since some of these Web sites do not yet exist to provide the services we need; we have to implement their functionality into our Web site. It may make sense that some new Web sites will open up who specialize in reputations. Tracking everything. And further, these reputation Web sites may specialize in certain sectors. The reputation Web site of the future is much different from a credit bureau, or Dun & Bradstreet. I imagine these reputation sites as being backed by large corporate names that are well respected in industry, and who will keep track of people's work related behavior across the country throughout their lives. Since these types of services are only available in the future, we built our system to do it all; not only be the marketplace, but also the reputation tracker, the agreement system, the document storage system, and so on.

If your mind is not trained properly, and highly qualified at the top of its class, then leave the thinking to those that can architect correctly again and again.

Transaction service vendors, who provide services such as video conferencing to our customers, will have to compete to obtain the business of a service emarketplace's customers. Since it is tough enough to manage and run an Internet based services marketplace, it is easier and better to outsource many of these transaction services to specialized companies. In our vocabulary, a transaction service is any service provided within the Web marketplace that helps facilitate the closure or completion of a deal. In setting up a marketplace it is best to work with companies who specialize in each transaction service but if these companies do not yet exist we have to provide these services. These services are necessary to create a well functioning marketplace and, again, the customer does not care about your focus, or ours; they just need a working system. In the interim, if a service cannot be provided by another company, we have to provide that service, or you do.

Another example is escrow services. There may be professionals who make a living by escrowing small construction deals between homeowners and construction service providers. If you go online to get a pool completed, both service provider and buyer agree that any disputes are resolved by the escrow company. I do not particularly want to be in the escrow business, but if I am going to build a marketplace for my customers, and the marketplace demands escrow services, and I have no other route, I must create this service. Therefore, in building your Internet City, you may have to run more than one dot com. Most likely, though, you will be able to partner up with a few dot coms that provide some of the needed transaction services for your customers.

Section 2: Customers, brokers, and the industry clearing house.

This section discusses brokers, clearing houses and the more structured and mature marketplaces.

In many of today's marketplaces, professional brokers are needed or are already in business. In looking at the information technology

If the information system doesn't tell you who is exactly qualified and available now, then the information system is no better than the yellow pages.

marketplace. there are many small businesses who need or want a new Web site. Many of these business people have very little background in technology, and do not understand how to purchase technology. Often these small businesses contract with a firm or individual, have a bad experience, do not get what they need, and then try again. Often on the third or fourth attempt, they finally get what they want and, often, only after a lot of time and money is spent. What this small business needed was a reputable and professional information technology broker. In many industries, brokers are desperately needed to close deals quickly, and the work done correctly and who understands the specific industries in which customers are involved. This type of economic model already exists in many industries today. In conceptual terms, this is how the model works:

Think of a customer wants to purchase something in an industry in which they are not qualified to do business. The customer contacts two or three brokers, and picks one to represent them. The broker goes to the 'members only' marketplace, and puts a deal together. An Internet system has to do the following:

1) Qualify customers versus brokers
2) Introduce customers to brokers
3) Create a broker, or professional 'members only' marketplace. Unless you are in the business, you are not allowed to enter – just like an auto auction (usually only car dealers are allowed in auto auctions).
4) Create a clearing house market for overflow and for buyers who have not found local sellers, and sellers who have no local buyers. (Local means in the current marketplace, which may be around the globe.)

You may have to create two sections of your marketplace, one for customers, and the other for professional buyers and sellers. Our LeadOptionEngine design supports this scenario.

The clearing house is difficult to execute on the net today. With so many little separated markets on the Internet, and with everyone

competing, the Internet has become very splintered. It is impossible to search in one marketplace, and know that all other marketplaces are being searched as well. We will go back to the kitchen remodeling scenario. Suppose there are ten construction or kitchen remodeling sites available for you to search and close a deal. Suppose you enter one of these sites, and find that no kitchen remodelers are currently available on that site. As a next step, would you prefer that the one site you entered check the other sites for you? Or would you prefer to re-enter all that information nine other times in each site? Obviously, you would want the one Web site you are working with to automatically search all relevant sites. This is where the clearing house comes in. Normally competitors do not like talking with each other directly. So a clearing house will communicate among members of a particular industry. If a clearing house market is set up, all commissions are already handled and decided, and all business rules are already set up. With a clearing house, a marketplace can deliver its extra supply and demand needs to the clearing house, and other similar marketplaces will try and fill those needs. The clearing house works both ways. It will find buyers for service providers, and find service providers for buyers. When this is built, it will be a wonderful and mature economic system that all users want. Go to one place, and be global. Wow! The LeadOptionEngine supports this kind of clearing house, and broker model. Not all industries need this type of model, but others are desperate for it.

Section 3: Accounting When to book revenue

Following is a suggested description of how to run your marketplace when it comes to accounting and booking revenue.

Suppose you start your marketplace. A lot of service providers sign up and deposit money in the hope of getting qualified buyers on your Web marketplace. In total, they deposit $10,000 in a given month but no buyers have been attracted yet. Here is where the Web marketplace, the buyer and the seller can all work together using the invisible hand of Adam Smith.

If the information system doesn't tell you who is exactly qualified and available now, then the information system is no better than the yellow pages.

Suppose your accounting organization has decided not to book revenue until a lead execute is generated. This says that if you, a user, deposits $100 into the system, and you have not received any leads yet, the Web marketplace does not yet credit itself with a doing a fine job. While ever the user does not get a lead, the Web marketplace has done nothing but as soon as a lead is generated, then the Web marketplace books in the revenue.

What the Web marketplace can do is spend a certain percentage of deposits toward the market need of those buyers and service providers to create leads. This will create a working system. Taking our first example, suppose your marketplace has just received $10,000 in deposits from service providers, and no lead executes have been realized. It is a good idea for the Web marketplace to spend $5000 of the $10,000 on extremely targeted advertising. Since the marketplace knows exactly the type of buyers its service providers want, your Web marketplace business can respond effectively to the desires of your users. This is a great way to ensure long-term success. Your users deposit money, the Web marketplace responds by driving the right buyers and sellers to the marketplace to make transactions occur. The Web marketplace is now focused on creating transactions, and not just getting deposit money. This is crucial to long-term success. If a Web marketplace's business focus is on getting deposits, its model will not work well. However it its business focus is on creating lead executes, then the business will prosper in the long term. Not booking the revenue until either a lead execute occurs or a certain percentage is paid, thus driving the right buyers and sellers to the marketplace, is key in establishing correct long-term incentives for the business.

I hope the reading of this document helps you in your quest to conduct service related transactions over the Internet in less than ten minutes.

To implement the LOE:

1. Present and train management and technical personnel on the LOE system

2. Prepare next steps to integrate the LOE into your Web marketplace

3. Design your interface and competitive advantage properties

4. Integrate all functions you need

5. Implement, configure and manage your marketplace.

6. Your system will have to be regulated by an appropriate organization as it is licensed under the regulated public license which is far superior to the present general public license.

This concludes the LeadOptionEngine Business Case

What can the LeadOptionEngine do for lifestyle? Quite a lot. A person can do many things during their lifetime. Instead of saying at dinner, "I am a doctor", someone could say, "I am a doctor for six months a year, a French chef for three months a year, a carpenter two months a year, and volunteer wildlife worker for one month a year. What do you do?" In the future after the Internet has matured, people who do only one thing will seem very narrow. The LOE will open tremendous opportunities in upgrading lifestyle of everyone.

If the information system doesn't tell you who is exactly qualified and available now, then the information system is no better than the yellow pages.

Conclusion and Next Steps

What should users do? Users should demand to know how securely a site maintains its data. Users should demand to know about the reputations of potential vendors. Users should demand good customer service. Users need to demand excellent service. As a group, we all need to get the proper government laws and legislation passed. Businesses then needs to build the proper tools, emarketplaces and communities and, finally, we all need to change our behavior to use the Internet in new and beneficial ways.

If nothing else, please remember that the following steps are a prerequisite to your Internet-based activities:

- Support correct government legislation, (such as the Web site ingredients act).
- Demand to understand Internet security.
- To ensure your Web site will work, use economic analysis.
- And above all, do what is necessary to persuade everyone to create and use Web sites that work well, save time or money, and help humanity.
- Tell two more people about what you have learned from reading this handbook.

More Help Needed from People like You

Send a version of this handbook to the peoples of the following nations:

Albania, Algeria, American Samoa, Andorra, Angola, Anguilla, Antigua, Argentina, Armenia, Aruba, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Barbuda, Belarus, Belgium, Belize, Benin, Bermuda, Bhutan, Bolivia, Bonaire, Botswana, Brazil, British Virgin Islands, Brunei, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Cayman Islands,

Central African Republic, Chad, Channel Islands, Chile, China, Colombia, Congo-Brazzaville, Congo-Kinshasa, Cook Islands, Costa Rica, Croatia, Curacao, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Faroe Islands, Fiji, Finland, France, French Guiana, French Polynesia, Gabon, Gambia, Georgia, Germany, Ghana, Gibraltar, Greece, Greenland, Grenada, Guadeloupe, Guam, Guatemala, Guinea Bissau, Guinea, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Macau, Macedonia, Madagascar, Malawi, Malaysia, Mali, Malta, Marshall Islands, Martinique, Mauritania, Mauritius, Mexico, Micronesia, Moldova, Monaco, Mongolia, Montserrat, Morocco, Mozambique, Myanmar/Burma, Namibia, Nepal, Netherlands Antilles, Netherlands, New Caledonia, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Puerto Rico, Qatar, Reunion, Romania, Russia, Rwanda, Saba, Saipan, San Marino, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovak Republic, Slovenia, Somalia, South Africa, South Korea, Spain, Sri Lanka, St. Barthelemy, St. Croix, St. Eustatius, St. Kitts and Nevis, St. Lucia, St. Maarten/St. Martin, St. Thomas, St. Vincent, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Taiwan, Tanzania, Thailand, Togo, Tortola, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Turks and Caicos Islands, U.S. Virgin Islands, Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay, U.S.A., Uzbekistan, Vanuatu, Vatican City, Venezuela, Vietnam, Wallis & Futuna, Yemen, Zambia, Zimbabwe

What you can do to help the Internet evolve:
Be a good & responsible Internet user.

At this time, we have plans to translate this book into the following languages: French, Spanish, Italian, German, Chinese, and Russian. Other languages will be included later.

There is no economic initiative or policy that is more crucial to improving the global economy, than creating appropriate Internet architecture, laws and emarketplaces that will facilitate proper Internet behavior.

It will take the efforts of many of us working together to create and implement the successful new economy and Internet that is envisaged in this handbook. This means that each of us – you the reader, as well as investors, government, users, businesses, and charities; everyone, must understand firstly what needs to be done and why, and then go out and do it. I can devise the strategy and policies, and set out the plan, but it is up to you to help put it into practical use.

Thank you for reading this book, and good luck out there on the Internet and in the new economy. If you have any questions do not hesitate to email me at rmd@rogermarxdray.com and please do not forget to share your new information with two (2) other people. If we are all travelling in the same direction, along a highway shining with the spirit of goodwill and adventure, the Internet may indeed prove to be the magic carpet that enhances the journey for all of us.

REWRITE Conclusion (not written yet)

Now that you have studied the architecture of the Internet, here are some of the miracuoous ways it will change our lives. The following sectors of society will undergo tremendous changes. (in the conlucsion, the future of each sector is explained in about three to five pages)

1. Labor Market Sector
2. Real Estate Renting and Buying
3. National and Global Law
4. Healthcare
5. Charity
6. Dateing and Religeon
7. Community Goods
8. Communities OutPowering Monopolies
9. Healthy Monopolies
10. Federal Law and Community Balance

What you can do to help the Internet evolve:
Be a good & responsible Internet user.

So what does this lead to in your lifetime?

If you live long and prosper:

You will see the end to mass car production.

People will keep cars for 20 to 40 years and do lots of customization.

Elimination of cars in inner cities. All roads will be closed to cars and transport will be walking, biking, roller blading, skating, skateboards, chariots pulled by people, sego or segway or whatever....

The end of today's healthcare system as it is in the USA. A new system will replace the insurance system, and it will be two tiered. One tier, if you can afford it, and another tier that is paid by taxes.

Law will be changed. Like we are not going to keep doing things the same way we have been for the past 300 years. And patent law will change. Like it ain't 1900 anymore. It's ludicrous to think these out-of-date, out-of-time, out-of-period laws will perpetuate to the next generation, as the next generation has never seen these laws make sense in their lifetimes. The older politicians of today have seen patent law make sense in our society. The younger generation born with the Internet has not ever seen patent law make sense or work successfully on the most powerful intellectual property arena of today's new world, the Internet. The younger generation only sees that the laws don't make sense now, and this is their first experience at seeing Internet patent law in action, and they see it fail miserably on the Internet over and over. Tomorrow's new law infrastructure will increase the speed and and lower the cost to judge and decide on disagreements and suits. Society will create a legal infrastructure where suits and disagreements are decided in minutes and hours,

not months and years. And laws will become more mathematical and hierachial. And illegal legislation will be removed.

And airlines will be regulated, and it will no longer be "stupid" or "bad" or "luxurious" to choose to fly on commercial jets when you want, without worrying about a penalty. People will be able to choose flights like trains, and decide when to fly based on weather, and last minute personal or business circumstances. Only availability of seats will change. The cost to fly will stay the same. It will be obvious to everyone that the airline industries natural market is a regulated market, not a competitive-laissez-faire market.

Communities will be stronger militarily. Where today's power is all in the hands of federal governments, local community law enforcement will enforce the cities laws, and given the choice of following federal or city wide laws, city wide laws and philosophies will prevail. People will be able to bring this power about without nuclear force, but instead with OneSherrifInASmallTown approach. The city will begin to realize that if it's executive and judicial and legislative branches are combined as one city force, the city will have the power to govern itself so as to create an self-optimizing economical, technical and political balance. Wars will tend to occur at city and inner city levels instead of the much more dangerous federal and international levels, where larger weapons are used.

And today's Renaissance will create amazing green technologies that are safe, non-toxic, and organic.

Supreme Court, U.S.
FILED
10-706 NOV 26 2010
OFFICE OF THE CLERK

In The

Supreme Court of the United States

Roger Marx Desenberg
Petitioner,

v.

Google, Inc.
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit

APPENDIX VOLUME 2

Roger Marx Desenberg
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(718) 701-4977

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EXHIBIT A

Significant Documents from Original Complaint, Pleadings, Motions, Orders, Reports, and Other Requirements of Rule 14

Exhibit A - 1

Abridged Original Complaint Documents

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ROGER MARX DESENBERG, Plaintiff,	)
v.	) CIVIL ACTION NO.
GOOGLE, INC., Defendant.	)

ORIGINAL COMPLAINT FOR
PATENT INFRINGEMENT AND DEMAND FOR JURY TRIAL

Plaintiff Roger Marx Desenberg ("Inventor"), for its Complaint of patent infringement against defendant Google, Inc. ("Google"), alleges as follows:

THE PARTIES

1. Plaintiff Roger Marx Desenberg principal place of business is at 200 Central Park South, Suite 16K, New York, NY, 10019.

2. On information and belief, Defendant Google Inc. ("Google") is a Delaware corporation with its corporate headquarters and principal place of business at 1600 Amphitheater Parkway, Mountain View, California, 94043.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35 United States Code. Subject matter jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1337 and 1338. Venue is proper in this Court under 28 U.S.C. §§ 1391 and/or 1400.

BACKGROUND

4. On January 5, 1999, the Inventor reserved the domain name "ProjectWork.com", to implement his invention. The Inventor, an economist and software engineer, had experience in architecting mission critical software systems using rapid application development techniques for many clients and many projects including

developing air traffic controller software for Delta Airlines, and developing critical accounting systems for United Parcel Service at their headquarters. Within approximately two months after reserving the domain name ProjectWork.com, the Inventor raised approximately $500,000, hired a team of software developers, and purchased an office building to create his invention. The invention included several entities to create a balanced and regulated lead generation marketplace wherein excessive fraud would be prevented, and an economically fair lead marketplace would result. The Inventor forecasted at that time, that if the industry did not adopt an entity that was granted the power or rights to enforce a quality control system, that fraud would proliferate.

5. During March of 1999, Inventor hired John Yates of Morris, Manning & Martin, LLP, to file a patent application, in the US and Europe, for his invention.

6. A provisional application was filed with the USPTO by Morris, Manning & Martin, LLP on July 22, 1999, four months after John Yates was hired. Mr. Yates did not file an application in Europe according to Inventor's requests.

7. The first implementation of the invention was completed during July of 1999.

8. Mr. Yates withdrew as Inventor's legal counsel after the provisional application was filed.

9. Alston-Bird LLP was hired by Inventor to complete the non-provisional application, which was filed on July 22, 2000.

10. Whereas prior to 2006 the Inventor did not understand patent law and patent processes, and depended on the expertise of the legal counsel he hired, and whereas, at the time, the Inventor did not understand the difference between provisional and non-provisional patent applications and the patent application process, his legal counsel was able to unnecessarily extend the time to file the non-provisional waiting 17 months before filing such non-provisional application, whereas the non-provisional should have been filed within two (2) months, after Inventor requested a patent application in March of 1999. This extra 15 months of unnecessary delay caused by the legal counsel hired by Inventor greatly damaged the Inventor's business due to the delay of issuance of the patent. Whereas the Inventor was not a large company with large resources, the Inventor was treated with indifference and incompetence by both Morris, Manning & Martin, LLP, and by Alston-Bird LLP, which caused a large portion of the unfair delay of the issuance of US Patent

7,139,732, and such indifference and incompetence continued even though the Inventor explained that the invention was likely to produce billions of dollars of revenue.

11. Google began using the Inventor's invention, and writing Lead Option contracts using the Maximum Price system in the fall of 2000. Since 2000, more than ninety percent (90%) of all of Google's revenue is generated through the use of Patent 732 technology. (see Exhibit "U" and Exhibit "J"). Google has no other large revenue producing technology, other than Patent 732 technology.

11. In November of 2002, the USPTO sent a response and notice to the Inventor's legal counsel, Alston-Bird LLP, concerning the patent application 09/621,663 which issued to Patent 7,139,732. For unknown reasons Alston-Bird refused to contact the Inventor, and instead sent notice to the USPTO that the Inventor could not be found, when in fact Alston-Bird had correct contact information for the Inventor, and Alston-Bird admitted in a letter to the USPTO that Alston-Bird did have a correct address for "Roger Desenberg", and further, Alston-Bird maliciously provided to the USPTO, an outdated business address for the Inventor that Alston-Bird admittedly knew was incorrect.

12. During 2003 the Inventor decided to leave the Atlanta area because the market for his services was very poor due to bad economic conditions, and such bad economic conditions of the time caused the process of gathering investment for Internet start-ups very difficult. As a result in attempting to sell his house, the Inventor decided to consider registering for Google's AdWords to help sell his house. Upon inspecting the AdWords system, which is a Maximum Price based system, the Inventor became aware that Google was using his invention.

13. The Inventor contacted the USPTO to find out the status of patent application 09/621,663, and the USPTO verbally told the Inventor that a response had already been sent to the Inventor's legal counsel, and that if a response was not received by the USPTO within several weeks, the patent application would be considered abandoned.

14. The Inventor contacted Alston-Bird concerning the patent application, and Alston-Bird asked to withdraw as legal counsel. The Inventor was unaware that Alston-Bird had received a response from the USPTO in November of 2003 and that Alston-Bird refused to contact him.

15. Five months after Alston-Bird received notice from the USPTO concerning patent application 09/621,663, and after Alston-Bird withdrew as legal counsel, the Inventor hired Joel Felber and Robert Faber of Ostrolenk, Faber, Gerb & Soffen, LLP in New York to continue the patent application process. Over a two years period Mr. Felber and Mr. Faber committed several acts of malicious fraud and delayed the patent application process unnecessarily for two years. See Exhibit "T".

16. One of the acts of fraud Mr. Felber committed concerned delaying the Inventor meeting with the patent examiner. During January of 2006, seven years after the Inventor hired his first legal counsel to file a patent application, the Inventor finally obtained a meeting with a USPTO patent examiner. Mr. Felber and Mr. Faber attended the first meeting between the patent examiner and the Inventor. During this first meeting between the Inventor and the patent examiner, the Inventor realized that Mr. Felber and Mr. Faber were working against him, and they were both delaying the processing of the patent application. See Exhibit "T".

17. The Inventor fired Mr. Felber and Mr. Faber, and revoked the power of attorney of Mr. Felber and Mr. Faber.

18. Within a few weeks, the Inventor again met with the patent examiner without legal counsel, and during a 30 minute meeting, the patent examiner and the Inventor worked together, and the patent examiner made an allowance, which means that the patent would issue soon. At this point in time, the Inventor realized that this meeting could have occurred six years earlier, and that if the legal counsel that the Inventor hired behaved according to the laws and guidelines attorneys are required to adhere to in the United States, that the Inventor would have obtained his patent two years after he hired his first patent attorney, instead of waiting seven years.

19. The Inventor responded to the USPTO's requests for suggestions and recommendations to improve the policies and procedures by travelling to Washington D.C., to the USPTO office, and speaking at USPTO public meetings about needed changes to the patent process system, and submitting documentation to the USPTO outlining the Inventor's recommended changes. In 2005 the Inventor filed a patent application in France and learned that in France an inventor has a right to file suit and prevent a company from stealing an invention thirty (30) days after filing the patent application. (see Exhibit "L") In the US, in this case, the Inventor waited

seven years before such rights were granted. The Inventor communicated to the USPTO that a new process was needed to enable inventors to obtain rights to exclude in a reasonable amount of time. The Inventor travelled to Berkeley, California, and personally met and spoke with Jon Dudas, the Undersecretary and Director of the USPTO. The USPTO has since adopted a new policy of enabling inventors to pay an extra fee to obtain a final decision on a patent application within twelve (12) months. See Exhibit "K".

19. On November 21, 2006, more than seven years after the Inventor hired the first patent attorney to represent him with the USPTO concerning applying a patent for his invention entitled "Systems, methods, and computer program products facilitating real-time transactions through the purchase of lead options", United States Patent No. 7,139,732 ("Patent 732") was issued listing Roger Marx Desenberg as the inventor. Roger Marx Desenberg holds 100% title to Patent 732. See Exhibit "Q".

20. Several leading US publications such as "BusinessWeek" and "The Economist" reported that Google's implementation of its AdWords and related systems is causing excessive fraud amounting to more than $1 billion of fraud per year confirming the Inventor's forecast in 1999, that an incompetent implementation of the Inventor's invention would cause excessive fraud. See Exhibit "F".

21. On November 22, 2006, Google received documentation from the Inventor including a cease and desist letter and Google confirmed they received documentation from the Inventor. Google requested a W-9 form be completed and signed by the Inventor, and stated that before they would pay the Inventor's first invoice, which was for $76,499,333, and that the Inventor must deliver the W-9 form to Google. The Inventor completed the W-9 form and delivered the form to Google according to their instructions. Since, Google has never paid the Inventor anything in any form. See Exhibit "E".

22. The Inventor has formulated a fair and reasonable fee system where infringers and licensees are required to pay a minimum fee of 7% of the revenue generated by Patent 732 technology, plus penalty fees of 3%, where such penalty fees are charged to infringers and licensees that do not implement the architecture required by Patent 732 owners that will remove excessive fraud, remove anti-trust violations, create wholesale markets, and create a trusted economically fair marketplace. See Exhibit "A" p.7 and Exhibit "P". Since Google has over $25 billion in cash reserves, Google has the ability to pay triple damages which is

approximately $10 billion, and make such payment without harm to them. See Exhibit "J".

23. The Inventor has formulated a fair and reasonable preliminary injunction plan, where Google and its customers can still operate without any interruption, without any loss of services to Google's customers, and such preliminary injunction implementation is technically very simple and can be implemented in one day. Ironically, after the Inventor is granted the enforcement of his patent rights, and Google pays its required fees, and after Google implements the architecture required by licensees, Google's revenue will most likely increase, while removing excessive fraud. See Exhibit "A".

24. Ascertaining patent infringement by Google of Patent 732 is straightforward and relatively simple.

25. Since the fall of 2000, Google has generated approximately $25 billion of revenue from using Patent 732 technology.

25. In patent cases, traditional rules of equity apply to requests for injunctive relief. eBay, Inc. v. MercExchange, LLC., (2006). This Court has the power to grant an injunction to prevent the violation of patent rights. See 35 U.S.C. § 283. In order to obtain a preliminary injunction, the Inventor, who owns Patent 732 has demonstrated in Exhibit "A":

(1) a reasonable likelihood of success on the merits;

(2) the prospect of irreparable harm to the Patent 732 owner (the Inventor) in the absence of the injunction;

(3) that this irreparable harm to the Inventor would exceed harm to Google when subject to the injunction; and

(4) that granting the injunction is in the public interest; and

(5) it is reasonable to assume the patent is valid.

This Complaint and the Inventor have met all requirements to obtain a preliminary injunction. See Exhibit "A".

COUNT 1
PATENT INFRINGEMENT

26. Defendant Google has used, sold or offered to sell, and will continue to use, sell or offer to sell, an Internet system and/or service that infringes each of the elements of one or more claims of Patent 732, without

license from the Inventor, in this judicial district and elsewhere throughout the United States.

27. By using, selling, and/or offering for sale its Internet services, defendant Google has directly and contributorily infringed, and will continue to directly and contributorily infringe, one or more claims of Patent 732 under 35 U.S. C. § 271 literally and/or under the doctrine of equivalents.

28. By making, using, selling, and/or offering for sale its Internet services, defendant Google has induced infringement of, and will continue to induce infringement of, one or more claims of Patent 732 under 35 U.S. C. § 271 literally and/or under the doctrine of equivalents.

29. On information and belief, Google's infringement of Patent 732 has been and continues to be willful and deliberate.

30. As a direct and proximate consequence of the acts and practices of defendant, plaintiff Inventor has been, is being and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under Title 35 of the United States Code.

31. As a direct and proximate consequence of the acts and practices of defendant, defendant has also caused, is causing and, unless such acts and practices are enjoined by the Court, will continue to cause irreparable harm to plaintiff Inventor for which there is no adequate remedy at law, and for which plaintiff is entitled to injunctive relief under 35 U. S. C. § 283.

PRAYER FOR RELIEF

32. WHEREFORE, plaintiff Inventor prays for the entry of a judgment from this Court in a timely manner:

a. Declaring that United States Patent 7,139,732 was duly and legally issued, is valid and is enforceable;

b. Declaring that defendant Google has directly infringed, contributorily infringed, and/or induced infringement of one or more claims of Patent 732;

c. Declaring that defendant Google has willfully infringed one or more claims of Patent 732;

d. Preliminarily enjoining Defendant and their officers, directors, agents, servants, affiliates, employees,

divisions, branches, subsidiaries, parents, and all others acting in concert or participation with any of them from infringement, inducing the infringement of, or contributing to the infringement of Patent 732 via a preliminary injunction under 35 U.S.C. § 271 of any one or more claims of Patent 732 pursuant to 35 U.S.C. § 283;

e. Declaring and initiating the preliminary injunction in (d) above within 60 days or less from the date of the filing of this Complaint, and continue the preliminary injunction until (i) triple damages have been received by the Inventor, whereas triple damages is calculated to be of 30% ((7% + 3%) x 3) of Google's revenue derived from Patent 732 technology since November 21, 2006, the date of issue of Patent 732, which is approximately equivalent to $10,053,691,961, and (ii) Google agrees to pay 7% plus penalties until the patent expires in 2020.

f. Awarding plaintiff damages in accordance with 35 U.S.C. § 284;

g. Awarding plaintiff its costs in connection with this action; and

h. Awarding plaintiff such other and further relief as this Court may deem to be just and proper.

DEMAND FOR JURY TRIAL

33. Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Under penalties of perjury, the Inventor hereby certifies and swears and affirms that

(i) Inventor has the authority to make this Complaint; and

(ii) the information provided in the Complaint and the exhibits is accurate; and

(iii) all the information contained herein is believed by the Inventor to be true and correct, and

(ii) wherein if there is an error in the information above, that such error is insignificant.

Dated November 20, 2008

Inventor Roger Marx Desenberg

By: _____

Roger Marx Desenberg (pro-se filing)
200 Central Park South
16K
New York, NY 10019
1-718-701-4977
roger@desenberg.com

Notary Area:

EXHIBIT "A" - PRELIMINARY INJUNCTION

This Exhibit "A" contains the fulfilled requirements to obtain a preliminary injunction and the preliminary injunction plan.

This case passes the four tests as required by the Supreme Court to issue an injunction as referenced from the Ebay/MercExchange case:

The Unanimous Opinion: The decision relies on the traditional "four-factor test" for determining whether to issue a permanent injunction: A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. These familiar principles apply with equal force to disputes arising under the Patent Act.

PRELIMINARY INJUNCTION PLAN

2. The nature of conducting business on the Internet is an environment where millions of computers work together to accomplish many different tasks. One of those tasks is obtaining leads using the Maximum Price system, wherein Google is the biggest user of the Maximum Price System on the Internet.

PROCESS **BEFORE** THE PRELIMINARY INJUNCTION:

Google's current implementation works as follows:

(i) Google writes Lead Option contracts containing Maximum Price information and keywords by taking the payment information of customers who desire to pay Google using the AdWords or AdSense Maximum Price system by obtaining payment information such as credit card, debit card or other payment information.

(ii) Leads are distributed and prices for leads are generated and charged to the customer.

(iii) Google pays commissions, salaries, and other fees to their associates, partners, employees, or others who are involved with Lead Option Maximum Price contracts.

PROCESS **AFTER** THE PRELIMINARY INJUNCTION:

The Inventor's preliminary injunction is to disable Google's ability to be paid directly by the customer.

After the preliminary injunction is implemented, Google's AdWords and AdSense system will work as follows:

(i) Customers go to Google's servers to enter in a Maximum Price, a set of keywords, payment information and possibly other related Lead Option contract information.

(ii) When the customer clicks on the "submit" or "payment" button, the customer will be taken to the Inventor's payment page, which can be the Inventor's Paypal payment page, and the payment information and maximum price and customer ID will be stored by Paypal. "Paypal.com" is a web site that enables its active users to receive payments, and Paypal.com can easily handle the volume of Google's customers payment transactions.

(iii) When it is time for Google to charge the customer, Google's systems will pass the following information to the Inventor's Paypal payment page: (i) customer ID, (ii) amount to be charged, (iii) the maximum price, and (iv) an invoice or campaign ID where a customer may have several different campaigns that may be based on different sets of keywords. At this point the Inventor will be paid.

(iv) the Inventor pays commissions to Google or other parties associated with the writing of the Lead Option contracts. Until the Inventor is paid triple damages in full as described herein, the Inventor shall pay Google a 10% commission based on the amount charged per customer. After the Inventor is paid triple damages in full as described herein, the Inventor will pay Google an amount equal to the full amount less seven percent (7%) less penalties of not more than five percent (5%) and less transaction fees.

PROPOSED FEE STRUCTURE

After the preliminary injunction is implemented and after triple damages are paid in full, Google will be paid at least 88% of the amount invoiced, less transaction fees.

Google may be paid as much 93% of the amount invoiced less transaction fees, if Google implements the architecture recommended by the Inventor, wherein the penalty fees can be reduced to be zero (0).

Thus if the transaction fees are 2%, and Google adheres to all architecture changes as required by the Inventor which can reduce Google's penalty fees to zero, Google could receive 91% of the invoiced amount.

Because Paypal already has a large infrastructure in place that can easily handle the processing of all of

Google's customers, the large influx of new customers into the Inventor's Paypal page will not cause a delay in processing.

Because Paypal includes customized data fields where information may be stored by Paypal customers, and because Paypal has an instant notification system, Google can be notified in substantially real time about the status of any transactions, and any approvals, credits, or other financial transaction information.

This type of preliminary injunction can easily be implemented by a rapid application development software team within twenty-four (24) hours.

FULFILLED PRELIMINARY INJUNCTION REQUIREMENTS

(1) A REASONABLE LIKELIHOOD OF SUCCESS ON THE MERITS

It only takes 30 minutes to 60 minutes to understand that Google's AdWords is infringing on Patent 732.

To quickly understand exactly what the invention is, and what Patent 732 technology consists of, it is worthwhile to watch an animated 8 minute movie explaining the Maximum Price system and its possible use at http://guardloan.com/content/LoeShorter.wmv

The following facts prove the likelihood of success:

(i) Patent 732 technology focuses on Maximum Price, and Google's AdWords system focuses on a Maximum Price.

(ii) Google's AdWords and AdSense systems infringes on each one of the fifteen phrases contained in Claim 1 of Patent 732 under the scenario when a vendor pays for AdWords and obtains a lead, and a service transaction is consummated between the vendor and a customer as a result of the AdWords lead.

(iii) Because the input screen and the output screens of Google's system and the Inventor's system is available to any Internet user it is very simple to identify the infringement. These screens are enclosed following this section.

(iv) Compared to a patent that might cover a manufacturing process wherein the manufacturing process is hidden from public view; and whereas patent infringement of a manufacturing process could be difficult to identify and require site visits; patent infringement in this case can be readily identified by any Internet user by

examining three areas:

(i) ProjectWork.com input and output web pages which are enclosed here.

(ii) Google's input and output pages which are enclosed here

(iii) Claim 1 of Patent 732

Claim deconstruction documents analyzing Claim 1 of Patent 732 were created by the Inventor and are enclosed here; and a claim deconstruction document was created by Kenyon & Kenyon LLP who requested the document they created not be made available to anyone but such document, with the heading changed is included here regardless of their request.

Most average lay persons who uses the Internet frequently for purchases and who spends 15 to 60 minutes

(i) watching the animated movie above, and

(ii) reviewing Google's input and output screens, and

(iii) reviewing the Inventor's ProjectWork.com input and output screens, and

(iv) reviewing Claim 1 of Patent 732;

can reasonably conclude that it is apparent that Google is most likely infringing on Patent 732.

(2) THE PROSPECT OF IRREPARABLE HARM TO THE PATENT 732 OWNER (THE INVENTOR) IN THE ABSENCE OF THE INJUNCTION;

The Inventor's life is limited in time, and has already been waiting ten (10) years to reap the benefits from his invention and hard work. Every day the Inventor has not been provided reasonable remedies for patent infringement by Google, the Inventor will continue to suffer irreparable harm due to not having money to do many different things, including but not limited to the following:

1) Inability to purchase a new residence in New York City;

2) Inability to travel to see extended family during holidays;

3) Inability to pay for private schools for his children;

4) Inability to participate in a profitable way in creating Internet startup companies during the limited times when the market is ripe for new Internet services, and wherein the Inventor cannot hire people,

pay for marketing, and invest in his new Internet venture, Penny7.com, a fund raising business for charities, startups, and non-profits;

5) Inability to join the New York Athletic Club;

6) Inability to pay for patent applications in Europe;

7) Inability to pursue his life long dream of obtaining a Nobel Prize in Economics;

8) Inability to dine at fine restaurants in New York City;

9) Inability to participate in politics or run for public office;

10) Inability to hire legal counsel;

11) Inability to pay for a family ski vacation;

12) Inability to complete production of a film about his life;

13) Inability to have his book entitled "Way 7 Intonomics" published and marketed;

14) Inability to diffuse the intense anger, frustration, and emotion generated from having had his invention stolen from him for 8 years while watching the patent infringers earn billions of dollars;

15) Inability to provide his economic expertise to help the US crippled financial system;

16) Inability to enjoy the fame from inventing the highest revenue producing Internet invention in our world.

See Exhibit "D".

Whereas;

(i) the Inventor is providing his own legal work to protect his patent rights;

(ii) the market for technical services is highly competitive which makes winning a job or project very difficult and requires a great deal time and effort invested in marketing and networking;

thus the Inventor has little resources or time to generate revenue to support his family.

Every day the Inventor suffers such harm, it is irreparable, as time cannot be reversed.

(3) THIS IRREPARABLE HARM TO THE INVENTOR WOULD EXCEED HARM TO GOOGLE WHEN SUBJECT TO THE INJUNCTION

Since Google has generates over several billion dollars of revenue annually, and has approximately $25 billion of cash reserves, Google's employees, customers, partners, and vendors will be virtually unaffected by the preliminary injunction.

(4) THAT GRANTING THE INJUNCTION IS IN THE PUBLIC INTEREST

The public interest will be served if a preliminary injunction is invoked for several reasons including but not limited to:

(i) vendors and customers will not experience any adverse change in using Google's AdWords and AdSense systems during or after the preliminary injunction is implemented, as the only change initially will be the payment page; and

(ii) upon the granting of the preliminary injunction Google will most likely agree to the Patent 732 licensing agreement, and Google will most likely implement the Inventor's suggested architecture to avoid penalty fees, and excessive fraud will decrease until excessive fraud is removed due to such architecture changes; and

(iii) whereas Sanford Litvak was recently hired by the Justice Department to oversee the anti-trust problems involving Google, such anti-trust problems will be removed after the licensing agreement is accepted by Google because the licensing agreement will include provisions that will open up wholesale markets allowing other companies to participate more fairly in the writing and selling and buying of lead option contracts; and

(iv) after the Inventor receives substantial payments, the Inventor will implement his securitization of Patent 732 revenues, and sell securities to the public markets, wherein such securities will pay substantial profits which will help the financial crisis and help stimulate the markets for the trading of securitized financial instruments. Enclosed is the Inventor's Private Placement Memorandum he has prepared in anticipation of receiving revenue from the preliminary injunction.

REASONABLE TO ASSUME THE PATENT IS VALID

No further investigation is necessary to determine if the patent is valid due to the following:

(i) the USPTO searched other patents and did not find any prior art, and such searching occurred over a seven (7) year period;

(ii) the Inventor searched all active patents that were filed before July 22, 1999, the date of the provisional filing, through the use of computer searches via the USPTO.gov web site, and there are no other patents that use the Maximum price system over the Internet; and (INCLUDE SEARCHES)

(iii) whereas the USPTO received a very large number of software and Internet patent applications during 1995-2005; and

whereas some patent examiners did not understand the subtle technical aspects of the new Internet technology; and

whereas some patent examiners issued patents where patents should not have been issued due to obviousness and prior art and being excessively broad; and

whereas patent examiners issued many patents that were not inventions, but were in fact broad claims of obvious software logic; and

whereas many of the Internet patents issued contained very little amounts of actual substance in their independent claims which often have only one or two phrases that are very broad; and

whereas many of the Internet patents issued listed inventors who are not skilled in the art of software and economics; and

whereas the Inventor is skilled in the art of software and economics through education and professional experience; and

whereas the Inventor's invention is not obvious; and

whereas the Inventor's invention solved a very complex Internet economic problem; and

whereas the Inventor's invention is very complex to implement; and

whereas the Inventor's independent claim 1 in Patent 732 contains fifteen (15) phrases that creates a narrow claim;

it is therefore reasonable to conclude that Patent 7,139,732 is a valid patent that is not excessively broad,

and that is not obvious, and where no prior art exists.

INVENTOR'S PATENT 732 FEE STRUCTURE

Fees are required from all LOE Emarketplaces. The rates vary from 7% to 50%.

Fee Guidelines:

50% - 40% for Brokers where projectwork.com acts as their Lead Exchange. Most of the infrastructure is not provided by the Broker. For example, one broker may make a living by finding work for 20 painting contractors.

15%-25% for Lead Exchanges whose development is directed by LeadOptionEngine.com. Most Lead Exchange or LOE Emarketplaces are of this category.

7%-10% for large Lead Exchanges (such as Google) that supply all of their own infrastructure. Patent 732 owners only collects minimum fees for certification, monitoring, and guaranteeing the LeadOptionEngine and Patent 732 brand name and trust to these large Lead Exchanges. This is only for the very largest corporations who provide all their own infrastructure. Services provided to large companies that are licensees and to their customers and partners includes software design, and monitoring services.

Penalties:

Under 3% Fraudulent Transactions	No Penalty
3% to under 5% Fraudulent Transactions (5% of fraud)	0.15% to 0.25%
5% Fraudulent Transactions (1 % per 5% fraud)	1.00%
10% Fraudulent Transactions (1 % per 5% fraud)	2.00%
15% Fraudulent Transactions (1 % per 5% fraud)	3.00%
20% Fraudulent Transactions (50% of fraud)	10.00%
30% Fraudulent Transactions (50% of fraud)	15.00%

As Patent 732 owners at a later date may require wholesale market participation and there may be penalty fees for those infringers and licensees that do not implement required wholesale architecture.

EXHIBIT "C" CALCULATION OF TRIPLE DAMAGES SINCE ISSUE DATE OF PATENT 732 THROUGH NOVEMBER 20, 2008

			Derived from Patent 732 Technology	Days of Revenue Counted		Average Per Day	Number of Days Fees Due	Percentage of Fees Due		Fees Due		Triple Damages
2006 Revenue	$	10,604,917,000	99%	365	$	28,764,021	40	10%	$	115,056,086	$	345,168,257
2007 Revenue	$	16,593,986,000	99%	365	$	45,008,346	365	10%	$	1,642,804,614	$	4,928,413,842
2008 Revenue 3/4	$	16,094,646,000	99%	273	$	58,365,200	273	10%	$	1,593,369,954	$	4,780,109,862
									Total Triple Damages		$	10,053,691,961

Explanation:
Historical revenue figures were taken from the Google Investor Relations web site page.
An average per day per year is calculated.
For 2008, only three quarters are reported, so the total revenue for the three quarters divided by 273 days, which is 3 quarters of a year is used to calculate an average daily amount of revenue generated by Patent 732 technology.
Since Patent 7,139,732 was issued on November 21, 2006, Google owes 40 days for 2006.
It is important to note that Google has approximately $25 billion in cash reserves so Google can afford to make such large payments without harm.

Fees due are 7% plus 3% penalty fees

EXHIBIT "E"NOTIFICATION TO GOOGLE INCLUDING CEASE AND DISIST LETTER

The following letters and invoices were delivered to Google. Most of these communications were received by Google on November 22, 2006.

First Official Guide to Internet Architecture Assembly

RMD INTERNET ARCHITECTURE

CHIEF INTERNET ARCHITECT

200 Central Park South, Suite 16K
New York, New York 10019
718-701-4977
roger@desenberg.com
rmd@luxport.com
http://www.projectwork.com

maxpricemodel.com
leadoptionengine.com
internetamendment.org
directemail7.org
penny7.com

projectwork.com
rmdia.com/portfolio
licensedinternetarchitect.com
intonomics.net
http://leadoptionengine.com

November 21, 2006

NOTICE OF INFRINGEMENT
Patent No. 7,139,732

Recipient Information:
Legal Division
Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
USA

Sender Information:
Roger Marx Desenberg
200 Central Park South
Suite 16K
New York, NY 10019

Sent by:
Roger Marx Desenberg

Sent via: USPS Overnight Mail
Re: Notice of Patent Infringement

Dear Google Representatives:

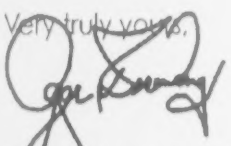
Roger Marx Desenberg ("RMD") owns patent number 7,139,732 as well as other foreign patent applications.

The information and functionality contained on the website of Google, specifically the AdWords technology and the use of Maximum amounts, indicates to us that your company is infringing on U.S. Patent No. 7,139,732.

I recommend that Google license the technology, which will most likely increase revenue for Google by a factor of 10, since we provide all licensees with confidential Internet architectures and designs, that lowers fraudulant transactions, and increases Maximum Lead Prices. If you are interested in obtaining a license under this patent, please contact me.

Regardless of whether or not you want to obtain a license to the patent, we require a response to this letter within thirty days or we will assume you do not want to amicably resolve this matter.
I look forward to hearing from you.

Very truly yours,



Roger Marx Desenberg
Chief Internet Architect

The Original LeadOptionEngine®

How Vendors and Customers will find each other for the next 100 years.

Lead Option Engine Invoice

U.S. Patent No. 7,139,732
Issue Date November 21, 2006

Roger Marx Desenberg
Inventor
200 Central Park South, #16K
New York, New York 10019

tel: 1-718-701-4977
fax: 1-646-365-4368
fees@leadoptionengine.com
www.leadoptionengine.com

To: Google, Inc.
Accounts Payable
1600 Amphitheatre Parkway
Mountain View, CA 94043

Amount Due:	**$71,013,306.67**
Date of Invoice:	**December 21, 2006**
Due Date:	**January 21, 2006**
License Period:	**November 21 to December 21, 2006**

Cost Basis

Quarterly Revenues Reported third Quarter 2006	$2,662,999,000.00
Average monthly revenue third Quarter 2006	$887,666,333.33
Rate*	7.0%
Penalty (discounted from 3.0%)**	1.0%
Total Fee Basis	8.0% of Revenue
Total Amount Due	$71,013,306.67

Remit and Payable to "Roger Marx Desenberg"

*The rate is based on the fee schedule at LeadOptionEngine.com, and is subject to increase at antyime for Infringers and Licensees who have not yet signed a license agreement.

**The penalty for 15% fraudulant transactions is 3%. Thus Google's normal penalty rate is 3%. A reduced penalty rate of 1% has been approved for this invoice. The reduced penalty rate will remain in effect as long as invoices are paid on time. If Google does not replace it's architecture with a less fraudulant architecture during the next 24 months, the penalty rate will increase to its normal amount according to the rate schedule at LeadOptionEngine.com/.

Roger Marx Desenberg reserves the right, if this invoice is not paid by January 21, 2007, to seek damages, attorney fees, court costs, interest of 18% or the highest interest rate allowed by law, and other costs associated with the collection of this invoice; and the right to enforce all patent rights granted to patent number 7,139,732 including the right to exclude Google, Inc. from using the LeadOptionEngine or the Max Price systems and methods which are infringed upon by Google's AdWords systems and methods; and to enforce the patent owner's right to exclude infringers. Patent rights include but are not limited to: the filing of a patent infringement lawsuit, which may include a request to seek or impose a permanent injunction, and may include other immediate actions. Additionally, should the invoice not be paid by the due date, Roger Marx Desenberg reserves the right to increase the Rate, and the Penalty rate for future invoices.

*Rates are posted on www.leadoptionengine.com. To obtain the lowest rate possible, invoices must be paid by their due dates, and a license agreement must be signed.

**Penalties are based on the percentage of fraudulant transactions that occur in a marketplace. Google's architecture is estimated to cause at least 15% of fraudulant transactions through "click-fraud" and other fraudulant activity. 80% of penalties are re-invested into the emarketplace subsectors where most of the fraud occured, or into new architectures that will lower fraudulent

First Official Guide to Internet Architecture Assembly

RMD INTERNET ARCHITECTURE

CHIEF INTERNET ARCHITECT

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internetamendment.org
directemail7.org
penny7.com

projectwork.com
rmdia.com/portfolio
licensedinternetarchitect.com
infonomics.net
http://leadoptionengine.com

December 22, 2006

Richard Sheffield
Accounts Payable
Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043

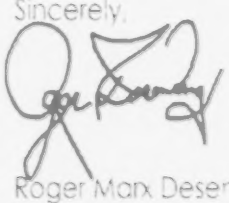
Dear Mr. Sheffield:

It was a pleasure receiving the email from you yesterday.
Enlcosed are payment details and a printed copy of the w-9 form:

If you send a wire send to:
Roger Marx Desenberg
M&I (Marshall & Ilsley Bank)
routing number: 063113727
account number: 00432 46423
Bank Address:
240 S. Pineapple
Sarasota, Florida 34236

If you send a check, send it to:
Roger Marx Desenberg
750 N. Tamiami Trail, #404
Saraasota, FL 34236
718-701-4977

Sincerely,



Roger Marx Desenberg
Chief Internet Architect

First Official Guide to Internet Architecture Assembly

RMD INTERNET ARCHITECTURE

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November 21, 2006

Accounts Payable
Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043

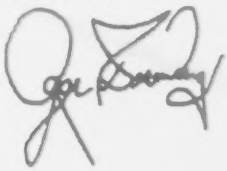
Dear Google Representatives:

Today, on November 21, 2006, my patent number 7,139,732 issued. The enclosed invoice is the license fee for the period November 21 to December 21, 2006, if the license fee is paid on time.

Hence, the invoice enclosed is a courtesy copy, one that we will resend in approximately 30 days. Since the amount of the invoice is rather large, we decided to send you the invoice at the earliest possible time, since we will have to meet with several Google representatives to have the invoice approved.

Please refer to www.leadoptionengine.com for rate details.

Sincerely,



Roger Marx Desenberg
Chief Internet Architect

EXHIBIT "F"GOOGLE FRAUD

The following documents show some of Google's Fraud.

LookSmart

FindArticles > Los Angeles Business Journal > August 29, 2005 > Article > Print friendly

Internet advertising fraud places google, yahoo on defensive

Amanda Bronstad

Kevin Steele used to routinely pay Yahoo! Inc. a few bucks each time someone clicked his company's online ad, which popped up when Internet users typed the word, "karaoke."

Then, his advertising bills began to double--and his sales didn't.

That's when Steele, co-owner of Karaoke Star, an online karaoke equipment retailer in Phoenix, discovered that one of his competitors had been repeatedly clicking his ads.

Earlier this year, he sent a letter to the company threatening to sue for "click fraud," which he claims cost his company $500,000.

"Before (this), we were growing 35 to 40 percent increases year after year," said Steele, who plans to file suit. "We were looking at doing $3 million this year. This guy, through his fraudulent activity, has cut our business off at the knees."

But Steele isn't only angry at his competitor. His lawyer may add another defendant to the suit: Yahoo.

Click fraud has been a problem nearly as long as pay-per-click advertising emerged as a preferred model for Internet advertising. But now more companies are turning their ire to the search engines themselves.

At least two class action suits have been filed so far against Yahoo, Google Inc. and other search engines by advertisers, claiming they have been overcharged because of widespread click fraud activity.

"There is significant pending litigation that could hurt these companies if they don't solve the problem," said Jessie Stricchiola, president and owner of Los Angeles-based Alchemist Media Inc., which helps companies identify click fraud, referring to the search engines.

Click Suits

As paid search advertising has grown, click fraud has become a more costly problem for the companies that pay for those ads. Estimates range, but some experts believe click fraud accounts for up to 30 percent of all paid search advertising costs. Yahoo and Google, the largest search engines, claim they stop some of the fraud and regularly issue refunds to victimized advertisers.

But in the recent suits, the advertisers say that those refunds, if they receive them, pale in comparison to their advertising losses.

In February, an Arkansas company called Lane's Gifts and Collectibles filed a proposed nationwide class action lawsuit against Google, Yahoo, Ask Jeeves Inc. and America Online Inc., claiming that the search engines inflate their advertising fees because they fail to weed out fraudulent clicks.

Last month, a Colorado-based company that sells software designed to keep track of click fraud filed a $5 million lawsuit against Google. Scott Boyenger, president of Click Defense Inc., said his company sued to recover its own advertising losses, as well as those of its clients, the companies that purchase its software.

"There are a lot of companies out there that have lost business or a significant amount of money and have no course or process to get some sort of remuneration for click fraud," he said.

Advertisers claim the search engines regularly conceal some of the fraud because they have no incentive to solve a problem that ultimately boosts their own revenues. "It's like putting the rat in charge of the cheese," said Jonas Saunders, a partner at McNeil Karafa Baty & Saunders, who represents Karaoke Star. "We feel the search engines have a responsibility to do a better job of policing the click fraud."

Google and Yahoo deny they lack the incentive to stop the fraud. "If an advertiser doesn't trust us, they'll spend less money on us," said Gaude Paez, senior manager of communications at Yahoo. "It's not in our interest to do anything but try to block or remove the clicks from the system."

To that point, Google recently received a $75,000 judgment in a suit it filed last year against Houston-based Auction Experts International, which allegedly received fraudulent ad revenue

from the search engine by repeatedly clicking on the ads displayed on its own Web site.

Business losses

Still, Shuman Ghosemajumder, business product manager at Google, downplayed the financial impact of click fraud. "Overall, what we see is the losses are small," he said.

But in filings with the Securities and Exchange Commission, Google has warned its shareholders that the click fraud problem may increase its refund costs, decrease its number of advertisers and lead to litigation. "If we find new evidence of past fraudulent clicks, we may issue refunds retroactively of amounts previously paid to our Google Network members," the company said in its most recent quarterly report. "This would negatively affect our profitability."

Yahoo has made similar statements in its filings.

Click fraud has become more sophisticated as the methods by which search engines sell online advertisements have evolved. About five years ago, it was limited to actions taken among competitors, who repeatedly clicked on the other's online ads to drive up advertising costs. Few advertisers filed suit over the issue.

But now many more dollars are being spent on the advertising. "In 1999, if there was a little fraudulent activity, that was no big deal," said Tom McGovern, chief executive of Snap.com, a Pasadena-based search engine launched this year. "But when you're spending 50 percent of your online marketing dollars in paid search, you say, 'Wow. That's a big issue.'"

Then there's the emerging click fraud involving "affiliate" programs offered by search engines. Those allow companies that want to expand their online advertising exposure to have their ads appear on individual Web sites with related subjects or products. Advertisers pay Google each time someone clicks on the ad from a Web site, whose publisher receives a cut of the revenue from Google.

More sophisticated

The fraud occurs when the Web site publisher, in an attempt to boost its own ad rev-. enues, repeatedly clicks on the advertisements that appear on its own site.

But as the frauds have become more sophisticated, so have the tools for fighting it. An advertiser may buy software from Click Defense or hire Stricchiola's Alchemist Media.

"Advertisers, in general, are getting more technologically savvy, as far as analyzing their data and traffic statistics," Stricchiola said. "As this industry matures, it's just normal for advertisers to get more granular and look closely at how they best spend."

James Butler, information technology director of the Chase Law Group in Studio City, said he looks for patterns to detect click fraud.

"I look at log files and find an IP address showing up 100 times. I can see they're clicking on a whole bunch of ads. That's not normal user behavior," he said.

The search engines also say they have automated software systems that filter out click fraud and teams of statisticians and analysts determining how much, if anything, should be refunded.

Executives at Yahoo and Google, citing a need to keep their "proprietary technologies" confidential, refused to say how many people they employ to combat click fraud or how they calculate the refunds. They also refused to discuss the lawsuits.

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Internet commerce

Truth in advertising

"Click fraud" poses a threat to the boom in internet advertising

WHAT makes Google so valuable? This week the search engine's share price rose above $500, valuing the company at more than $150 billion. Investors' optimism stems in large part from Google's dominance in the booming field of internet advertising, which is currently worth around $17 billion a year and is expected to grow to $41 billion by 2010. In the last quarter alone, Google is said to account for at least

...g

...internet advertising

...Google so ... could be in jeopardy unless it ...
...this week the ... cluding Google do more to clamp ...
...share price rose ... tices on the web. Concern has ...
...valuing one com... that "click fraud" might under...
...than $150 billion ... The problem is that many ...
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...Google's dom... ments so that they pop up for ...
...world of in... for a particular word is ...
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...in the lon... prepared to pay a small ...
...half a cent of ... an advertisement ...
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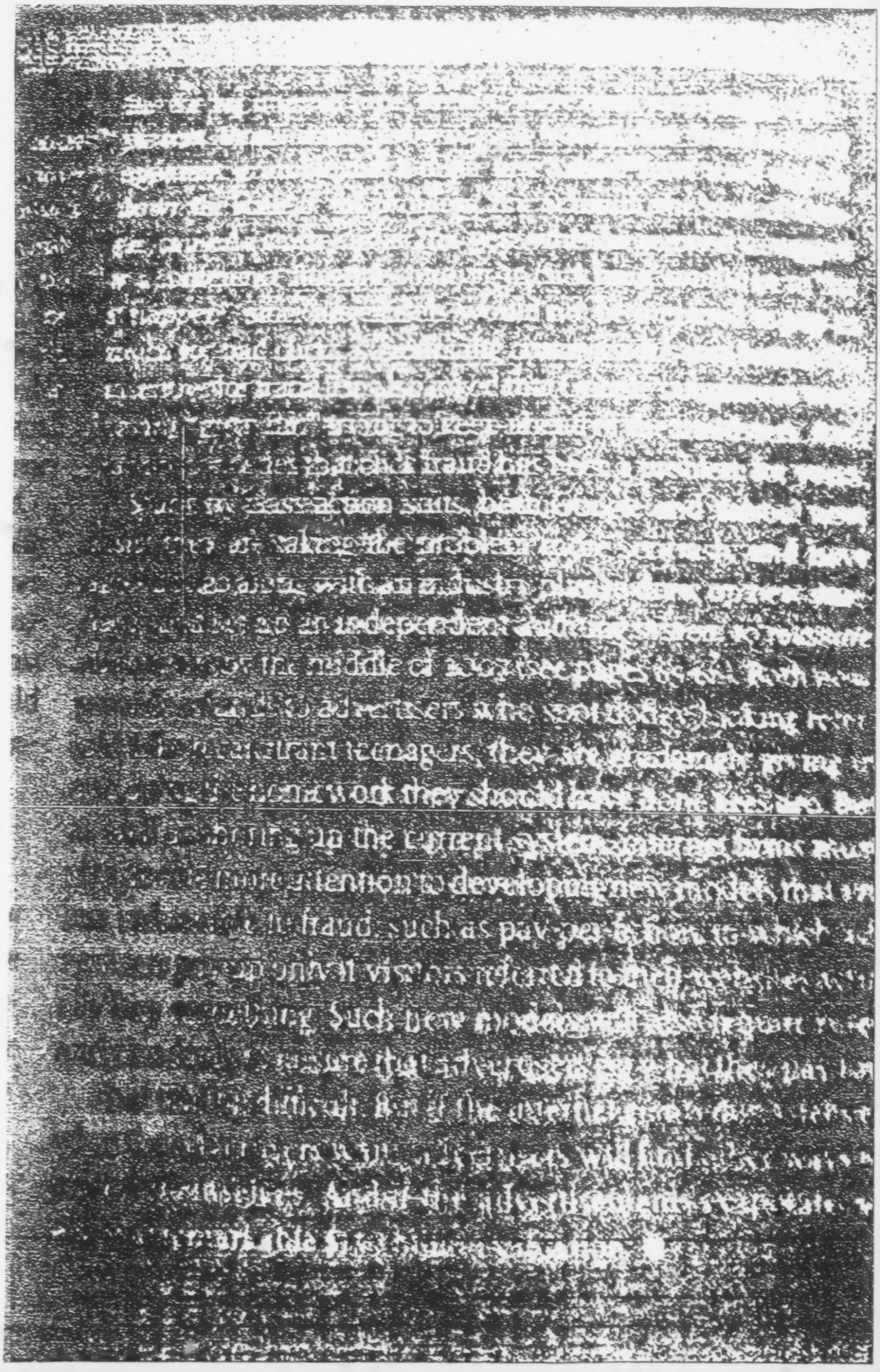

English

The Lead / Ad Generation Industry of Google: How is Competition, Fraud, and Economic Fairness Related to this new Internet MaximumPrice System Industry?

By Roger Marx Desenberg

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This article examines a new premise and understanding concerning the economic characteristics and the nature of today's highest revenue producing Internet emarketplace exchange: the MaximumPrice Lead / Ad Generation Systems.

The assumption is that most of what the public knows about Google and its AdWords systems, who invented it, why there is rampant click fraud, why so many companies are suing Google including large companies like Geico and American Airlines, is completely incorrect and non-factual. The new paradigm of the historical facts is, in summary:

During 1999 and 2000 Google used its Page Rank invention to index every web page on the Internet and identify the MaximumPrice System that was invented in 1999 at ProjectWork.com, as being one of the most promising Lead / Ad exchange generators on the Internet, and in so doing, with government approval and abiding by intellectual property laws, Google implemented a variation of the original MaximumPrice system, and named their new system AdWords. US laws allow companies to steal and use research and development of other companies that who have not yet been issued patents on their technology. And since the USPTO had not yet issed the patent for the MaximumPrice system, Google was able to implement it, legally, on their site.

The original Lead / Ad Generation MaximumPrice System invention was contructed with architecture that included a regulatory agency responsible for regulating MaximumPrice Systems by maintaining economically fair exchanges and enabling wholesale market standards.

The new AdWords system was implemented as a solo MaximumPrice system, without a regulatory authority involved, and AdWords uses very rudimentary methods and thus creates an environment where fraud can proliferate rapidly. During the seven (7) years the inventor endured while waiting for the patent to issue, the MaximumPrice System reached a level where it earned over $7 billion annually for Google. But click fraud, at 15%, was over $1 billion, and its increasingly deterimental effects began to ripple throughout the economy.

The premise of this article supports that the ***cause of Google's AdWords excessive click fraud and unfair competitive actions*** is due to the following factors:

1) Google's ***AdWords was implemented using inadequate architecture*** because the invention was copied, and lacked the expertise of the original team who invented the first MaximumPrice Lead / Ad generation system.

2) The ***lack of the regulatory Internet agency*** responsible for regulating businesses that create MaximumPrice Lead / Ad exchanges, like Google.

The agency has not yet been formed due to the grossly inadquate US Patent Law and Procedure that is requiring 10 years of government administration before validating the MaximumPrice System patent holder their right-to-exclude (US Patent 7,139,732).

Following is the Lead / Ad generation architecture that will succeed in

- **lowering click fraud** to less than 2%
- creating **wholesale Lead / Ad markets** that OPENs competition in grandiose ways that will help the American company beyond imagination
- enable millions of Americans to successfully participate in a **fraud free labor marketplace** where today, they cannot find jobs, are unemployed, or employed at very low wages.

Using the USA's philosophy of balance of powers, like the SEC that regulates the stock markets, and the Federal Reserve that regulates the Banks where the lead person sets certain interest rates here is the architecture required to create a balanced and well functioning economically fair Lead / Ad emarketplace:

To create a MaximumPrice environment that prevents excessive fraud and excessive unfair competition requires a balance-of-powers architecture that includes one Internet Agency to regulate the MaximumPrice Lead / Ad Generation emarketplaces, where one person is ultimately responsible for setting several critical configuration parameters in response to economic conditions so we can all enjoy a fair and free Internet Labor and Services marketplace.

This is the preferred architecture that will work. By 2007, after 7 years of MaximumPrice use, the marketplace has proved that the balance-of-powers architecture that was designed in 1999 is 100% correct in that it predicted that crime in some form (click fraud and unfair competition) would proliferate without a regulatory agency in place. Today's AdWords generates over $1 billion in click fraud.

Without the Internet Agency, the entire architecture is destined to fail due to market crime and a poor quality market system, and such poor implementation could significantly reduce the quality of life for many laborers and service vendors who are depending on the Internet for new business. People's dependency on the Internet for finding new business is growing every day.

The problems we are experiencing today with Google's AdWords system were caused by the United States Patent and Trademark Office's problems during the last decade where they were caught unprepared and untrained for the onslaught of Internet patent applications which require special expertise in this new and curious technology, the Internet. If US Patent No. 7,139,732 (Patent 732) would have issued on time, instead of 7 years late in 2006, the inventor would have had the opportunity to create the Internet Agency and the controls necessary to govern MaximumPrice markets, which would have resulted in the prevention of Google's rampant click fraud, and unfair competitive activities.

The inventor is still waiting for the courts to validate his rights to open up his business, protected by Patent 732. This may take another two to three years unless special proceedings are organized. The business is being the regulating Internet entity for MaximumPrice system exchanges. The Internet Agency is similar to balance-of-powers organizations like the SEC and its relationships with the stock markets, and the Federal Reserve and its relationships to banks. In the same manner the Internet Agency's purpose is to regulate the MaximumPrice Lead / Ad Generation businesses. Before the business can operate the courts must understand that the Internet runs in real time, and the courts must validate the exclusion rights granted by Patent 732. If the US Government wants to cut down on fraud and unfair competition, then the US Government and its courts must grant real time exclusion rights to valid patented emarketplace technology, and then the American people will be served in the area of fair competition and having available non-fraud markets.

Competitiveness in the MaximumPrice Lead / Ad Generation Markets is significantly effected by fraud, and the establishment of wholesale markets and architecture regulation, and is not related to a big company buying another big company. Microsoft is just trying to fight competitively against Google in any way it can, because, it seems Microsoft understands the MaximumPrice Lead / Ad Generation system is going to be VERY profitable over the next few decades.

Patents, if crafted and used correctly, can provide critical economic benefits to Internet users: decreasing fraud and unfair competition through regulation. To accomplish this, regulators and patent holders need real time rights to exclude. The nature of the Internet is that in runs in real time. For the Internet to run well, everything needs to run in real time, including Leads and Ads, and transactions, as well as patent owners' right to exclude. Real time exclusion rights can be leveraged to serve justice in real time without waiting for the relatively extremely slow nature of the US court system. Essentially what should be decided in days, is now taking a few years. The business of many Internet patent holders depends on their ability to actually use their rights to exclude at Internet speeds. Then patent holders can enforce the regulation of their intellectual property to guarantee quality and security for their customers.

US government should take action so justice can be served expeditiously. The longer everyone waits for Patent 732 case to be validated by the courts, the longer the American people have to live with click fraud and unfair competition, which is now a huge problem. Regulating businesses that use the MaximumPrice over the Internet for Services and Labor requires a tremendous amount of expertise. The cause of the waiting is excessive unfair and unreasonable required government administration processes that is in effect facilitating the crime of allowing big companies to continue to willfully infringe and use the intellectual property and research and development of patented technology.

Essentially, right now, without the patent leveraging its rights, which may take another 2 years, the MaximumPrice industry is in a monopoly / oligopoly phase. Thre are only a handful of big companies that run MaximumPrice Lead /Ad Exchanges. Without an Internet Agency enforcing a wholesale system, a monopoly may be the next best choice. At least most vendors and customers are in the same marketplace, and thus able to find each other, without repeated searching. Since marketplaces like Google's are not currently implementing an open and economically fair market, a proper Lead/Ad wholesale market does not exist. The efficiencies to be gained by the creation of formal wholesale markets will create economic benefits that will ripple through the economy. But since Patent 7,139,732 has not yet been validated by the courts, and the actions required to create a new environment that enables regulation of this new Internet system is not yet accomplished, excessive fraud and unfair competition will continue.

So will it make a difference to the people of America if Google purchases DoubleClick? Probably not.

The solution everyone really needs, is the Internet Agency regulating organization, which will be a reality, when the US courts finally validate that Google's AdWords infringes on Patent 732.

It seems the purchase of DoubleClick by Google should be allowed. Whether or not the purchase happens will not significantly affect click fraud rates, or MaximumPrice rates that users enter, or unfair competition. Not competition, nor click fraud, nor economic fairness, none of these are significantly affected by either the successful purchase or the unsuccessful purchase of DoubleClick by Google. This purchase is not what the industry needs to reduce click fraud and save itself. Whether or not Google purchases DoubleClick does really has very little potential of adversely affecting the Lead/Ad industry in terms of competition relating to anti-trust law.

How Did We Get Here?

It takes approximately 20 hours, half a week, for any judge, patent attorney, software expert, or anyone else, to understand whether or not Google's AdWords infringes on Claim 1 in Patent 7,139,732. That's 3 or 4 days. Not a lot of time. But the way the US legal system works its magic, a big company, whose billions are earned from stolen technology, can leverage the US legal patent system so it takes 10 years for a small company to reap some kind of royalty. And still, more often than not, the US legal patent system can take away an inventor's "right to exclude" so the inventor is not left with a business, but is instead left with a small cash sett[illegible] while the big companies run the business for dec[illegible]ough the use of unfair competition.
So here is the crime the US government is facilitating:

Instead of taking a few days validate a patent case, the government is making the inventor wait 10 years.
10 years instead of 3 days.
WHY?

And in this case, everyone loses, except Google
The people of America lose because they are being told that it is permissible for a company to misuse stolen technology in a way that causes over a $1 billion of fraud per year! The rippling affects of fraud are felt fast through the economy. Because of this fraud, some small businesses fail, some people are out of work, all as a result of the click fraud. But most people don't have the economic education and background to understand all of the rippling economic effects.

As the US labor and services economy moves to the Internet, eventually most labor and services will be transacted on the Internet. And if Lead transactions for labor is not done in an economically fair way, many people will continue to suffer financially.

So right now, we have an inept company, Google, using stolen technology, and not understanding how to use it, thus they created system that generates over 15% of fraud. But most people don't understand the real picture. They applaud that Google has grown the way it has, because these people don't recognize that, it seems:

"it's not Google that makes the MaximumPrice System succeed, it's the MaximumPrice System that makes Google succeed."

So most people would say, incorrectly, "Google is a real success story!". Actually, "Google stole the most powerful Internet technology ever invented, while the government facilitated the entire crime, and now Google doesn't understand how to use the powerful technology, so the people of America are suffering, and 15% fraud is the final result, and Google is making billions."

EXHIBIT "I"MINIMUM DOCUMENTATION NEEEDED TO IDENTIFY INFRINGEMENT

The documents in Exhibit "I" is the minimum set of information required to quickly identify Google's infringement of US Patent No. 7,139,732:

1. Claim 1 of Patent 7,139,732
2. Input and Output Screens of Inventor's Original Invention
3. Input and Output Screens of Google's AdWords
4. Inventor's Explanation of Maximum Price system
5. Google's Explanation of Maximum Price system

Claim 1 of Patent 7,139,732:

1. A method for a user using a communication network to search for and identify at least one matching provider of project work, the method comprising;

transmission of a lead comprising contact information that enables communication between the user and the provider,

wherein the transaction lead price is the amount of money paid for the lead, and further

wherein a service is performed by the user or the provider as a result of the tranmission of the lead and

wherein the performance of the service includes a service transaction fee paid by the user or the provider;

storing in a database at least first provider information and second provider information,

the at least first provider information and the at least second provider representing at least respective maximum lead prices, each of the respective maximum lead prices representing the maximum amount that each of at least a first provider and a second provider is willing to pay for an lead,

wherein each of the at least first and second providers provide at least one service with which the lead is associated;

comparing the respective maximum lead prices to determine a lowest respective maximum lead price;

identifying the provider associated with the lowest one of the respective maximum lead prices;

receiving at least one lead limit that represents a maximum quantity of leads to be provided;

receiving from a user or provider a request for contact information, the contact information enabling communication between the user and at least one of the first provider and the second provider;

selecting at least one provider based on each respective provider's maximum lead price and the lead limit;

calculating a respective transaction lead price for each of the at least one selected provider, wherein the respective transaction lead price equals at most each respective selected provider's maximum lead price;

and providing the at least one lead to the user or provider for project work.

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information technology

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...add value to your search

Team Title: Oracle Dev Team

▶ Maximum Lead Option Price	30
▶ Desired Number of Leads	3
▶ Desired Start Date	05/02/2006
▶ Must Start Date	
▶ Completion Date	
▶ Send First Lead On	05/02/2006
▶ Stop Sending Leads On	06/02/2006

Submit

Lead Options

Lead Options are your ticket to guarantee that you get the next project or team that comes through projectwork.com. Lead Options are how you control your standing on this site. Decide what a lead is worth to you. You will be able to express this value in our the Max Lead Option Price. If you have any questions please review the Lead Option Definition List before preceding.

HELP!

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You have been given 3 Leads!
Please contacts these leads in a timely manner.
Good luck! EMAIL_ADDR: admin@siteseven.com
PHONE: 770-794-9477
WEB_SITE: adminJenkins_29admin
EMAIL_ADDR: colby@siteseven.com
PHONE: 770-794-9477
WEB_SITE: ColbyWatsonAtom
EMAIL_ADDR: test@projectwork.com
PHONE: 718 701-4977
PHONE: 718 701-4977
WEB_SITE: FelixFlowersfelix2
FAX: 718 701-4977

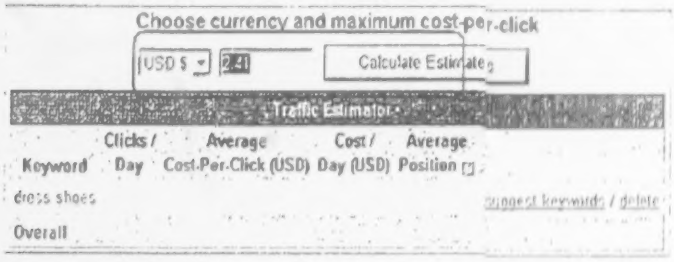
Contact Name: Colby Watson
Company : Site 7 Corp - ProjectWork Organization Number: 313
Address : 701 Whitlock Ave
Address2: Bldg K Unit 46
City: Marietta State: GA
Zip: 30064
Country: USA
Contact by: 313:Colby
Contact by: EMAIL_ADDR:colby@siteseven.com
Contact by: PHONE:770-794-9477

Contact Name: Felix Flowers
Company : Felix House - ProjectWork Organization Number: 5435
Address : 26 st
Address2: 12000
City: NY State: n7
Zip: 10022
Country: USA
Contact by: 5435:Felix
Contact by: EMAIL_ADDR:test@projectwork.com
Contact by: PHONE:718 701-4977
Contact by: PHONE:718 701-4977
Contact by: WEB_SITE:FelixFlowersfelix2

How do I choose my maximum CPC?

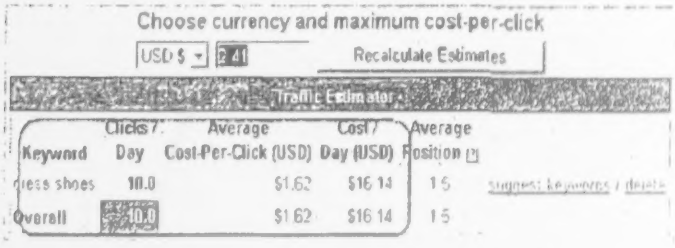
Choosing a maximum cost-per-click

The pre-filled amount highlighted in blue is our recommended maximum CPC. Matching this amount ensures maximum ad exposure and clicks for all of your keywords. Once you have decided on a maximum CPC, click Calculate Estimates.



Assess your cost, click, and position estimates

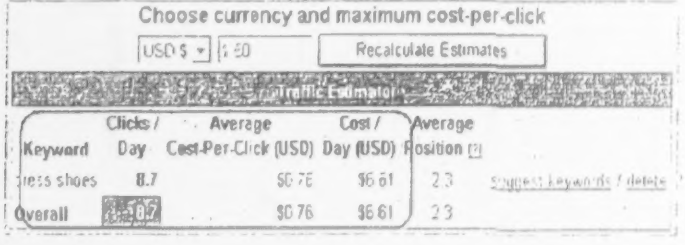
The traffic estimator returns estimates for how much you might pay per day for the keywords you have chosen. In this example, the average cost per day is US$16.14 with an average CPC of US$1.62. You'll also see the average position of your ad. Here, the average position is 1.5.



You may decide that the Traffic Estimator predicted too many/few clicks at too high/low a CPC. If so, you can enter a new maximum CPC in the maximum CPC field and click Recalculate Estimates.

You will now see a new list of estimates. In this example, lowering the maximum CPC to US$1.50 from US$2.41 resulted in an average CPC that was, on average, US$0.86 lower. However, the average position dropped from 1.5 to 2.3 and the average clicks per day dropped as well.

If cost is more important to you, you may choose to go with this recalculated option. If position and exposure are more important, you may try option 1.



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examples: *reporting or broad matching*

Search Help Center

Look Up Terminology

Glossary

Learn from other AdWords users

Ask questions, share answers, and post your favorite AdWords tips and tricks on the AdWords Help Discussion Group.

Posts are not moderated by Google

Can I see what my competitors are bidding?

Don't see the answer to your question? Try one of these resources:

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Learning Center - Build and test your knowledge of AdWords.

Contact Us - Let one of our AdWords Specialists help.

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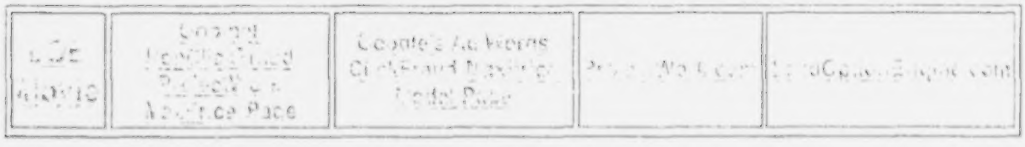
The MaxPrice Model Explained



WARNING:

An Internet emarketplace system is much more complex than the simplified explanation below. Emarketplace criminal abuse reduces the performance of all Maxprice Model systems. To prevent criminal abuse MaxPrice Model emarketplaces need to license with a proper Internet Architecture Vendor. The MaxPrice Model System can also be used to help ensure voting systems are legitimate. Thus MaxPrice Model emarketplaces effect the balance among wholesale emarketplaces, monopolies, governments, vendors and customers. Laws in many countries hold emarketplace owners accountable for Emarketplace Criminal Activity (ECA). ECA rates are monitored by Internet Architecture Vendors of MaxPrice Model emarketplaces, such as the LeadOptionEngine Organizations that maintain emarketplace systems, and become powerful economic sectors where vendors and customers earn livelihoods from the connections made, are subject to ensuring Emarketplace Criminal Activity levels are low to lower liability risk.

The MaxPrice Model:
What It Is:

The LeadOptionEngine® is the original MaxPrice Model system, determined on January 5th, of 1999, to be an extremely worthy Internet invention. Before explaining what it is, we will first review other technologies, the telephone, and the television, to help explain how the Internet is.

As a major new technology develops, certain methods are discovered in how to use new technology. For example, when telegraphs were deployed in 1800's, two

Here, in a very simplified manner are the critical portions a vendor or customer will use in any MaxPrice Model system:

Maximum Price:	$2.00
Maximum Exposure:	$100.00
Time Period:	1 month
Market Price:	$0.74
Connections To Date:	15

The Maximum Price refers to the maximum amount of currency a user is willing to pay

inventors had the same epiphany after thirty years of telegraph single message use, a multiple message telegraph could be invented to transfer voice, and hence, the telephone was invented. The two inventors, without ever seeing each others paperwork, raced to the patent office within hours of each other. And remarkably the two inventors had very similar drawings, and paperwork. Why? Because intelligent minds work alike. And really, even to this day, wired telephones are remarkably the same as they were back in the 1800's. The only two major additions to the telephone are wireless technology, and adding a computer to the phone to remember text such as phone numbers. The point is, once society discovers a new technology, the best inventions using that technology is usually discovered quickly, and does not change much, for a long time. Even after a hundred years, a telephone today does the same thing it did one hundred years ago, it carries voice from one place to another in real time. Quality has improved, but essentially functionality has not changed.

Television is also similar. We have had three major advanced in television over 80 years. First there was black and white, then color, then HDTV. And that's about it. In the end you have a box, and you can see and hear what is happening somewhere else, in real time. It's as amazing today as it was in the 1930's.

With the Internet, the same kinds of events are occurring. There is probably only one best way to connect customers with vendors across the Internet in real time. And that method is the MaxPrice Model system that is at the heart of the LeadOptionEngine®. For example, given 50 million vendors who compete every day for business, it is a difficult task to match a customer, using economically fair methods, with the right for a connection. The "connection" can be a click on a link, an email, transfer of contact information, could be a chat window, even a phone call. This connection connects the customer with the vendor. The user enters in the Maximum Price. This is far more efficient than bidding systems, where users repeatedly change bid prices. A Maximum Price is entered, and the market works from there. Zero can also be entered as a Maximum Price.

Maximum Exposure is a the total amount of money the user is willing to pay for all connections during the Time Period. The Time Period can be system set, like per month, or set by the user, depending on how the emarketplace is set up. Embedded in the Maximum Exposure is also the number of connections the user will receive. The number of connections can be limited by number or by a currency amount. A user may only want 5 leads, (or connections). Or the user may want as many leads as possible for a total of $100 at $2 per Maximum Price paid per lead.

The Market Price is an emarketplace formula. There are an infinite number of formulas that can work. Here is the classic formula:

Ten users enter in the following Maximum Prices:
$2.00, $1.50, $1.00, $10, $0.70, $0.50, $0.20, $0.20, $0.10, $0.00

Five users are chosen to display to the end user. Those with the highest Maximum Prices are displayed. The fifth user sets the Market Price in this formula, the $0.70 price. Hence the ACTUAL prices paid for the connections or leads are:
$0.74, $0.73, $0.72, $0.71, $0.70

The $0.74 gets listed first, and $0.70 gets

vendor, in real time. The computer and the Internet makes this possible. Out of 50 million vendors, in real time, the LeadOptionEngine can find the best three matches for a customer or a vendor. This is an amazing thing. This will allow all 6 billion of us, eventually, to think as one entity. By matching what people demand, with what people can supply, in real time, with billions of users, will create a powerful and balanced global economy.

Here is the magic:
Repeated bidding is not needed.
(Bidding is an inefficient process for lead generating Internet emarketplaces.)
Vendors can enter send data one time to the emarketplace, to specify a period of time, and pay different and fair market prices for leads generated.
(Bidding systems do not work. Vendors bidding several times per connection, can easily cost the vendor the time to bid 300 times for 30 connections. That means answering an email or logging into a system 100 times and making decisions, and bids, for 10 connections.)

listed fifth. The first user pays a nominal 1 penny per position to be at the top.

With the MaxPrice Model, a vendor can enter in

ONE Max Price,
a time period,
a set of maximum exposure values,
and pay fair market prices everytime,
and
enter in the data in 2 minutes.

The time difference is 2 hours for a bid process and 2 minutes for a MaxPrice Model process.

In our example, bid process users would have to spend 2 hours making 300 bids
(at an avg of 10 bids per connection) to obtain 30 connections.
Only 2 minutes of data entry time for 30 connections is necessary
using the MaxPrice Model process.

Google AdWords

AdWords Help Center

Change Language: English (US)

Maximum Cost-Per-Click

Your maximum cost-per-click (CPC) is the highest amount that you are willing to pay for a click on your ad. You can set a maximum CPC at the keyword- or Ad Group-level. The AdWords Discounter automatically reduces this amount so that the actual CPC you are charged is just one cent more than the minimum necessary to keep your position on the page.

Was this information helpful?

○ Yes ○ No

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- Daily Budget
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- Display URL

Don't see the answer to your question?
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- Learning Center - Build and test your knowledge of AdWords.
- Contact Us - Let one of our AdWords Specialists help.

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examples: *reporting* or *broad matching*

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Learn from other AdWords users

Ask questions, share answers, and post your favorite AdWords tips and tricks on the AdWords Help Discussion Group.

Posts are not moderated by Google

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Google has replaced "maximum CPC" on the front screen, and has hidden it in the help. (October 2010)

"Maximum CPC" was on Google's screens for several years and until the US Patent No. 7,139,732 case was filed on November 21, 2008. Since that time several versions attempting to hide infringement have been implemented. The "Bid Option" is an attempt at hiding infringement.

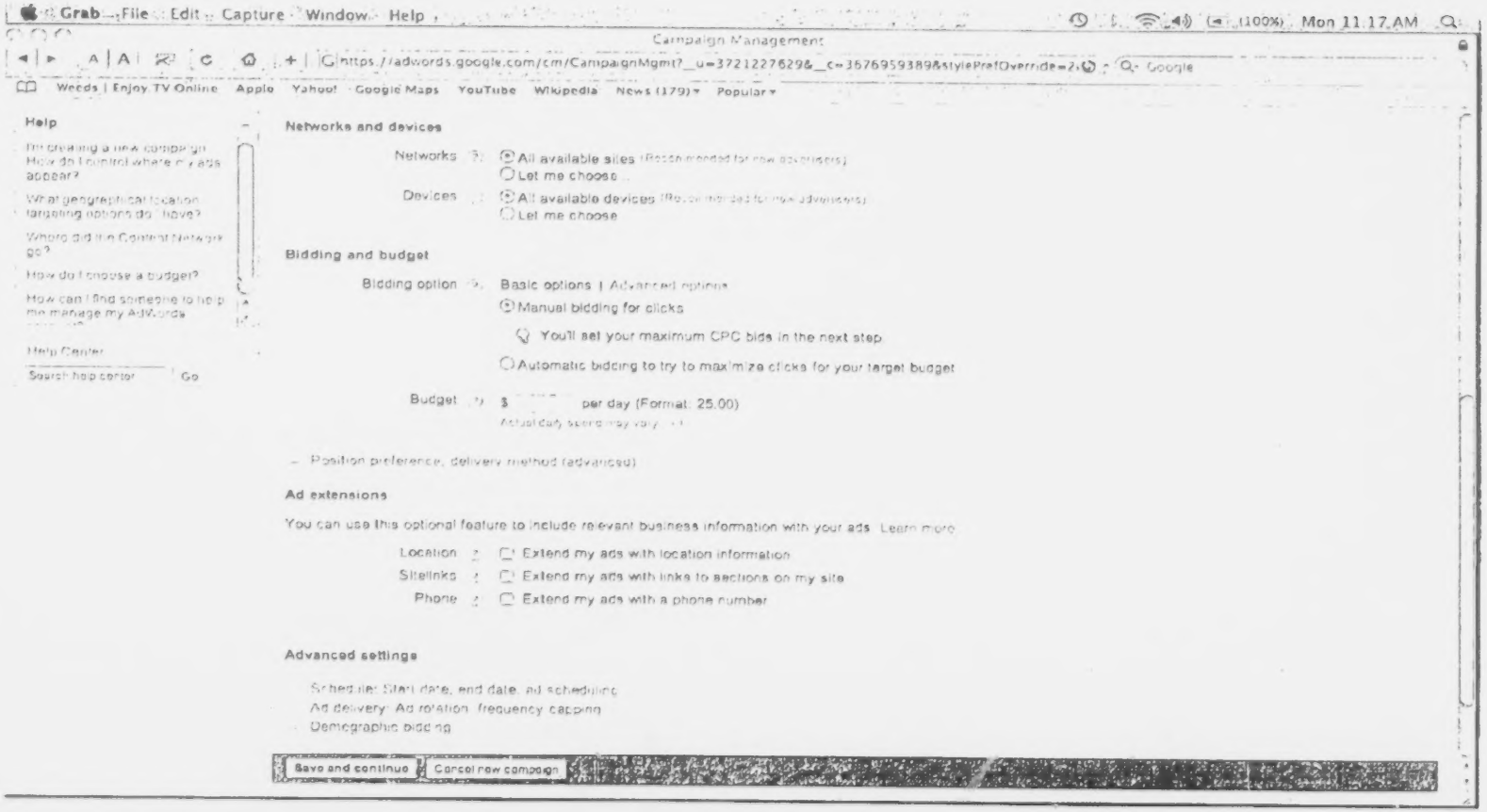

EXHIBIT "J"GOOGLE HISTORY

The documents in Exhibit "J" confirm when Google starting using Patent 732 technology and confirm Google's revenue.

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Google Milestones

2006 - 2005 - 2004 - 2003 - 2002 - 2001 - 2000 - 1999 - 1998 - 1997-1995

Google is a play on the word **googol**, which was coined by Milton Sirotta, nephew of American mathematician Edward Kasner, and was popularized in the book, *Mathematics and the Imagination* by Kasner and James Newman. It refers to the number represented by the numeral 1 followed by 100 zeros. Google's use of the term reflects the company's mission to organize the immense, seemingly infinite amount of information available on the web.

1995 - 1997

Back before Google? Aye, there's the Rub.

According to Google lore, company founders Larry Page and Sergey Brin were not terribly fond of each other when they first met as Stanford University graduate students in computer science in 1995. Larry was a 24-year-old University of Michigan alumnus on a weekend visit; Sergey, 23, was among a group of students assigned to show him around. They argued about every topic they discussed. Their strong opinions and divergent viewpoints would eventually find common ground in a unique approach to solving one of computing's biggest challenges: retrieving relevant information from a massive set of data.

By January of 1996, Larry and Sergey had begun collaboration on a search engine called BackRub, named for its unique ability to analyze the "back links" pointing to a given website. Larry, who had always enjoyed tinkering with machinery and had gained some notoriety for building a working printer out of Lego™ bricks, took on the task of creating a new kind of server environment that used low-end PCs instead of big expensive machines. Afflicted by the perennial shortage of cash common to graduate students everywhere, the pair took to haunting the department's loading docks in hopes of tracking down newly arrived computers that they could borrow for their network.

A year later, their unique approach to link analysis was earning BackRub a growing reputation among those who had seen it. Buzz about the new search technology began to build as word spread around campus.

1998

The search for a buyer

Larry and Sergey continued working to perfect their technology through the first half of 1998. Following a path that would become a key tenet of the Google way, they bought a terabyte of disks at bargain prices and built their own computer housings in Larry's dorm room, which became Google's first data center. Meanwhile Sergey set up a business office, and the two began calling on potential partners who might want to license a search technology better than any then available. Despite the dotcom fever of the day, they had little interest in building a company of their own around the technology they had

developed.

Among those they called on was friend and Yahoo! founder David Filo. Filo agreed that their technology was solid, but encouraged Larry and Sergey to grow the service themselves by starting a search engine company. "When it's fully developed and scalable," he told them, "let's talk again." Others were less interested in Google, as it was now known. One portal CEO told them, "As long as we're 80 percent as good as our competitors, that's good enough. Our users don't really care about search."

Touched by an angel

Unable to interest the major portal players of the day, Larry and Sergey decided to make a go of it on their own. All they needed was a little cash to move out of the dorm — and to pay off the credit cards they had maxed out buying a terabyte of memory. So they wrote up a business plan, put their Ph.D. plans on hold, and went looking for an angel investor. Their first visit was with a friend of a faculty member.

Andy Bechtolsheim, one of the founders of Sun Microsystems, was used to taking the long view. One look at their demo and he knew Google had potential — a lot of potential. But though his interest had been piqued, he was pressed for time. As Sergey tells it, "We met him very early one morning on the porch of a Stanford faculty member's home in Palo Alto. We gave him a quick demo. He had to run off somewhere, so he said, 'Instead of us discussing all the details, why don't I just write you a check?' It was made out to Google Inc. and was for $100,000."

The investment created a small dilemma. Since there was no legal entity known as "Google Inc.," there was no way to deposit the check. It sat in Larry's desk drawer for a couple of weeks while he and Sergey scrambled to set up a corporation and locate other funders among family, friends, and acquaintances. Ultimately they brought in a total initial investment of almost $1 million.

Everyone's favorite garage band

In September 1998, Google Inc. opened its door in Menlo Park, California. The door came with a remote control, as it was attached to the garage of a friend who sublet space to the new corporation's staff of three. The office offered several big advantages, including a washer and dryer and a hot tub. It also provided a parking space for the first employee hired by the new company: Craig Silverstein, now Google's director of technology.

Already Google.com, still in beta, was answering 10,000 search queries each day. The press began to take notice of the upstart website with the relevant search results, and articles extolling Google appeared in USA TODAY and Le Monde. That December, PC Magazine named Google one of its Top 100 Web Sites and Search Engines for 1998. Google was moving up in the world.

1999

On the road again

Google quickly outgrew the confines of its Menlo Park home, and by February 1999 had moved to an office on University Avenue in Palo Alto. At eight employees, Google's staff had nearly tripled, and the service was answering more than 500,000 queries per day. Interest in the company had grown as well. Red Hat signed on as its first commercial search customer, drawn in part

by Google's commitment to running its servers on the open source operating system Linux.

On June 7, the company announced that it had secured a round of funding that included $25 million from the two leading venture capital firms in Silicon Valley, Sequoia Capital and Kleiner Perkins Caufield & Byers. In a replay of the convergence of opposites that gave birth to Google, the two firms — normally fiercely competitive, but seeing eye-to-eye on the value of this new investment — both took seats on the board of directors. Mike Moritz of Sequoia and John Doerr of Kleiner Perkins — who between them had helped grow Sun Microsystems, Intuit, Amazon, and Yahoo! — joined Ram Shriram, CEO of Junglee, at the ping pong table that served as formal boardroom furniture.

In short order, key hires began to fill the company's modest offices. Omid Kordestani left Netscape to accept a position as vice president of business development and sales, and Urs Hölzle was hired away from UC Santa Barbara as vice president of engineering. It quickly became obvious that more space was needed. At one point the office became so cramped that employees couldn't stand up from their desks without others tucking their chairs in first.

No beta search engine

The gridlock was alleviated with the move to the Googleplex, Google's current headquarters in Mountain View, California. And tucked away in one corner of the two-story structure, the Google kernel continued to grow — attracting staff and clients and drawing attention from users and the press. AOL/Netscape selected Google as its web search service and helped push traffic levels past 3 million searches per day. Clearly, Google had evolved. What had been a college research project was now a real company offering a service that was in great demand.

On September 21, 1999, the beta label came off the website.

Still Google continued to expand. The Italian portal Virgilio signed on as a client, as did Virgin Net, the UK's leading online entertainment guide. The spate of recognition that followed included a Technical Excellence Award for Innovation in Web Application Development from PC Magazine and inclusion in several "best of" lists, culminating with Google's appearance on Time magazine's Top Ten Best Cybertech list for 1999.

2000

Built-in innovation

At the Googleplex, a unique company culture was evolving. To maximize the flexibility of the work space, large rubber exercise balls were repurposed as highly mobile office chairs in an open environment free of cubicle walls. While computers on the desktops were fully powered, the desks themselves were wooden doors held up by pairs of sawhorses. Lava lamps began sprouting like multi-hued mushrooms. Large dogs roamed the halls — among them Yoshka, a massive but gentle Leonberger. After a rigorous review process, Charlie Ayers was hired as company chef, bringing with him an eclectic repertoire of health-conscious recipes he developed while cooking for the Grateful Dead. Sections of the parking lot were roped off for twice-weekly roller hockey games. Larry and Sergey led weekly TGIF meetings in the open space among the desks, which easily accommodated the company's 60-odd employees.

The informal atmosphere bred both collegiality and an accelerated exchange of

ideas. Google staffers made many incremental improvements to the search engine itself and added such enhancements as the Google Directory (based on Netscape's Open Directory Project) and the ability to search via wireless devices. Google also began thinking globally, with the introduction of ten language versions for users who preferred to search in their native tongues.

Google's features and performance attracted new users at an astounding rate. The broad appeal of Google search became apparent when the site was awarded both a Webby Award and a People's Voice Award for technical achievement in May 2000. Sergey's and Larry's five-word acceptance speech: "We love you, Google users!" The following month, Google officially became the world's largest search engine with its introduction of a billion-page index — the first time so much of the web's content had been made available in a searchable format.

Through careful marshalling of its resources, Google had avoided the need for additional rounds of funding beyond its original venture round. Already clients were signing up to use Google's search technology on their own sites. With the launch of a keyword-targeted advertising program, Google added another revenue stream that began moving the company into the black. By mid-2000, these efforts were beginning to show real results.

On June 26, Google and Yahoo! announced a partnership that solidified the company's reputation — not just as a provider of great technology, but as a substantial business answering 18 million user queries every day. In the months that followed, partnership deals were announced on all fronts, with China's leading portal NetEase and NEC's BIGLOBE portal in Japan both adding Google search to their sites.

To extend the power of its keyword-targeted advertising to smaller businesses, Google introduced AdWords, a self-service ad program that could be activated online with a credit card in a matter of minutes. And in late 2000, to enhance users' power to search from anywhere on the web, Google introduced the Google Toolbar. This innovative browser plug-in made it possible to use Google search without visiting the Google homepage, either using the toolbar's search box or right-clicking on text within a web page, as well as enabling the highlighting of keywords in search results. The Google Toolbar would prove enormously popular and has since been downloaded by millions of users.

As 2000 ended, Google was already handling more than 100 million search queries a day — and continued to look for new ways to connect people with the information they needed, whenever and wherever they needed it. They reached out first to a population with a never-ending need for knowledge — students, educators, and researchers — paying homage to Google's academic roots by offering free search services to schools, universities, and other educational institutions worldwide.

Realizing that people aren't always at their desks when questions pop into their heads, Google set out to put wireless search into as many hands as possible. The first half of 2001 saw a series of partnerships and innovations that would bring Google search to a worldwide audience of mobile users. Wireless Internet users in Asia, Japanese users of i-mode mobile phones, Sprint PCS, Cingular, and AT&T Wireless customers, and other wireless device users throughout the world gained untethered access to the 1.6 billion web documents in Google's growing index.

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Full year Financial Tables with 2008, 2007, 2006, 2005, 2004, **2003** quarterly data

Income Statement

(Figures in thousands, except per share amounts and EPS)

	Full Year			2003 (unaudited)			
Revenues	2001	2002	2003	Q1	Q2	Q3	Q4
Revenues	86,426	439,508	1,465,934	248,618	311,199	393,942	512,175
Y/Y Growth Rate	*352%*	*409%*	*234%*	*488%*	*296%*	*201%*	*173%*
Q/Q Growth Rate	*NA*	*NA*	*NA*	*32%*	*25%*	*27%*	*30%*
Google web sites	66,932	306,978	792,063	157,900	183,102	207,239	243,822
Y/Y Growth Rate	*NA*	*359%*	*158%*	*341%*	*209%*	*124%*	*104%*
Q/Q Growth Rate	*NA*	*NA*	*NA*	*32%*	*16%*	*13%*	*18%*
Google Network web sites	0	103,937	628,600	81,218	117,583	174,444	255,355
Y/Y Growth Rate	*NA*	*NA*	*505%*	*17329%*	*845%*	*462%*	*326%*
Q/Q Growth Rate	*NA*	*NA*	*NA*	*35%*	*45%*	*48%*	*46%*
Total Advertising Revenues	66,932	410,915	1,420,663	239,118	300,685	381,683	499,177
Y/Y Growth Rate	*NA*	*514%*	*246%*	*560%*	*320%*	*209%*	*178%*
Q/Q Growth Rate	*NA*	*NA*	*NA*	*33%*	*26%*	*27%*	*31%*
Licensing & other revenues	19,494	28,593	45,271	9,500	10,514	12,259	12,998
Y/Y Growth Rate	*NA*	*47%*	*58%*	*57%*	*53%*	*73%*	*51%*
Q/Q Growth Rate	*NA*	*NA*	*NA*	*10%*	*11%*	*17%*	*6%*
As % of Revenues							
Google web sites	*77%*	*70%*	*54%*	*64%*	*59%*	*53%*	*48%*
Google Network web sites	*0%*	*24%*	*43%*	*33%*	*38%*	*44%*	*50%*
Licensing & other revenue	*23%*	*6%*	*3%*	*4%*	*3%*	*3%*	*2%*

Cost	Full Year 2001	2002	2003	2003 (unaudited) Q1	Q2	Q3	Q4
Cost of Revenues*	15,104	132,575	634,411	88,647	116,762	173,398	253,604
As % of Revenues	17%	30%	43%	36%	38%	44%	50%
Traffic Acquisition Cost	0	94,457	526,533	70,131	96,559	143,487	216,356
As % of Revenues	0%	21%	36%	28%	31%	36%	42%
Other Cost of Revenues*	15,104	38,118	107,878	18,516	22,203	29,911	37,248
As % of Revenues	17%	9%	7%	7%	7%	8%	7%
Research & Development*	20,940	40,494	229,605	31,928	36,306	76,652	84,719
As % of Revenues	24%	9%	16%	13%	12%	19%	17%
Sales & Marketing*	21,743	48,783	164,935	25,385	31,915	52,394	55,241
As % of Revenues	25%	11%	11%	10%	10%	13%	11%
General & Administrative*	17,675	31,190	94,519	17,952	19,432	24,942	32,193
As % of Revenues	20%	7%	6%	7%	6%	6%	6%
Settlement of dispute with Yahoo!	NA	NA	NA	NA	NA	NA	NA
As % of Revenues	NA	NA	NA	NA	NA	NA	NA
Contribution to Google Foundation		NA	NA				
As % of Revenues		NA	NA				
Total Costs & Expenses*	75,462	253,042	1,123,470	163,912	206,415	327,386	425,757
Y/Y Growth Rate	123%	235%	344%	505%	335%	343%	307%
Q/Q Growth Rate	NA	NA	NA	57%	26%	59%	30%

Profitability	Full Year 2001	2002	2003	2003 (unaudited) Q1	Q2	Q3	Q4
Income from operations	10,964	186,466	342,464	84,706	104,784	66,556	86,418
As % of Revenues	13%	42%	23%	34%	34%	17%	17%
Net Income	6,985	99,656	105,648	25,800	32,168	20,426	27,254
As % of Revenues	8%	23%	7%	10%	10%	5%	5%
EPS (As reported)							
Basic	$0.07	$0.86	$0.77	$0.20	$0.24	$0.14	$0.19
Diluted	$0.04	$0.45	$0.41	$0.10	$0.12	$0.08	$0.10
Number of Shares ('000)							
Basic	94,523	115,242	137,697	127,339	135,710	141,412	146,326
Diluted	186,776	220,633	256,638	248,687	257,361	257,943	262,561

Balance Sheet & Cash Flow Statement

(Figures in thousands, except per share amounts and EPS)

	Full Year			2003 (unaudited)			
	2001	2002	2003	Q1	Q2	Q3	Q4
Cash & Marketable Securities	33,589	146,331	334,716	233,144	226,684	299,023	334,717
Accounts Receivable	18,117	61,994	154,690	79,811	98,479	118,879	154,690
DSO (in days, using ending AR)	77	51	39	29	29	27	27
Property and equipment, net	26,591	53,873	188,255	76,486	99,110	147,413	188,255
Total Assets	84,457	286,892	871,458	420,970	574,976	725,048	871,458
Cash Flow from Operations	31,089	155,265	395,445	113,198	63,976	131,727	86,544
Capital Expenditures	13,060	37,198	176,801	29,550	31,003	59,757	56,491

Supplemental Information

(Figures in thousands, except per share amounts and EPS)

	Full Year			2003 (unaudited)			
	2001	2002	2003	Q1	Q2	Q3	Q4
Stock-based compensation	12,383	21,635	229,361	36,418	34,165	73,794	84,984
Int'l revenues as % of Total Revenues	18%	22%	29%	27%	28%	30%	30%
Ending Permanent Headcount	284	682	1,628	889	1,154	1,406	1,628
Sequential Headcount Growth Rate	*NA*	*140%*	*139%*	*30%*	*30%*	*22%*	*16%*

* Includes stock-based compensation charges

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Full year Financial Tables with 2008, 2007, **2006**, 2005, 2004, 2003 quarterly data

Income Statement

(Figures in thousands, except per share amounts and EPS)

	Full Year			2006 (unaudited)			
Revenues	2004	2005	2006	Q1	Q2	Q3	Q4
Revenues	3,189,223	6,138,560	10,604,917	2,253,755	2,455,991	2,689,673	3,205,498
Y/Y Growth Rate	*118%*	*92%*	*73%*	*79%*	*77%*	*70%*	*67%*
Q/Q Growth Rate	*NA*	*NA*	*NA*	*17%*	*9%*	*10%*	*19%*
Google web sites	1,589,032	3,377,061	6,332,797	1,297,317	1,432,461	1,625,977	1,977,042
Y/Y Growth Rate	*101%*	*113%*	*88%*	*97%*	*94%*	*84%*	*80%*
Q/Q Growth Rate	*NA*	*NA*	*NA*	*18%*	*10%*	*14%*	*22%*
Google Network web sites	1,554,256	2,687,942	4,159,831	928,376	996,566	1,037,022	1,197,867
Y/Y Growth Rate	*147%*	*73%*	*55%*	*59%*	*58%*	*54%*	*50%*
Q/Q Growth Rate	*NA*	*NA*	*NA*	*16%*	*7%*	*4%*	*16%*
Total Advertising Revenues	3,143,288	6,065,003	10,492,628	2,225,693	2,429,027	2,662,999	3,174,909
Y/Y Growth Rate	*121%*	*93%*	*73%*	*79%*	*78%*	*71%*	*67%*
Q/Q Growth Rate	*NA*	*NA*	*NA*	*17%*	*9%*	*10%*	*19%*
Licensing & other revenues	45,935	73,558	112,289	28,062	26,964	26,674	30,589
Y/Y Growth Rate	*1%*	*60%*	*53%*	*82%*	*58%*	*42%*	*37%*
Q/Q Growth Rate	*NA*	*NA*	*NA*	*26%*	*-4%*	*-1%*	*15%*
As % of Revenues							
Google web sites	*50%*	*55%*	*60%*	*58%*	*58%*	*60%*	*62%*
Google Network web sites	*49%*	*44%*	*39%*	*41%*	*41%*	*39%*	*37%*
Licensing & other revenue	*1%*	*1%*	*1%*	*1%*	*1%*	*1%*	*1%*

	Full Year			2006 (unaudited)			
Cost	2004	2005	2006	Q1	Q2	Q3	C
Cost of Revenues*	1,468,967	2,577,088	4,225,027	904,119	989,032	1,048,728	1,28
As % of Revenues	*46%*	*42%*	*40%*	*40%*	*40%*	*39%*	
Traffic Acquisition Cost	1,228,677	2,114,942	3,308,777	722,736	785,159	825,264	97
As % of Revenues	*39%*	*34%*	*31%*	*32%*	*32%*	*31%*	
Other Cost of Revenues*	240,290	462,146	916,250	181,383	203,873	223,464	30
As % of Revenues	*8%*	*8%*	*9%*	*8%*	*8%*	*8%*	
Research & Development*	395,164	599,510	1,228,589	246,599	282,552	312,632	38
As % of Revenues	*12%*	*10%*	*12%*	*11%*	*12%*	*12%*	
Sales & Marketing*	295,749	468,152	849,518	190,943	196,397	206,972	25
As % of Revenues	*9%*	*8%*	*8%*	*8%*	*8%*	*8%*	
General & Administrative*	188,151	366,532	751,787	169,395	172,638	190,010	21
As % of Revenues	*13%*	*6%*	*7%*	*8%*	*7%*	*7%*	
Settlement of dispute with Yahoo!	201,000	NA	NA	NA	NA	NA	
As % of Revenues	*6%*	*NA*	*NA*	*NA*	*NA*	*NA*	
Contribution to Google Foundation	NA	90,000	NA	NA	NA	NA	
As % of Revenues	*NA*	*1%*	*NA*	*NA*	*NA*	*NA*	
Total Costs & Expenses*	2,549,031	4,121,282	7,054,921	1,511,056	1,640,619	1,758,342	2,14
Y/Y Growth Rate	*127%*	*62%*	*71%*	*86%*	*81%*	*68%*	
Q/Q Growth Rate	*NA*	*NA*	*NA*	*12%*	*9%*	*7%*	

	Full Year			2006 (unaudited)			
Profitability	2004	2005	2006	Q1	Q2	Q3	Q4
Income from operations	640,192	2,017,278	3,549,996	742,699	815,372	931,331	1,060,594
As % of Revenues	*20%*	*33%*	*33%*	*33%*	*33%*	*35%*	*33%*
Net Income	399,119	1,465,397	3,077,446	592,291	721,077	733,361	1,030,716
As % of Revenues	*13%*	*24%*	*29%*	*26%*	*29%*	*27%*	*32%*
EPS (As reported)							
Basic	$ 2.07	$ 5.31	$ 10.21	$ 2.02	$ 2.39	$ 2.42	$ 3.36
Diluted	$ 1.46	$ 5.02	$ 9.94	$ 1.95	$ 2.33	$ 2.36	$ 3.29
Number of Shares ('000)							
Basic	193,176	275,844	301,403	293,896	301,410	303,400	306,906
Diluted	272,781	291,874	309,548	304,123	310,038	310,574	313,459

Balance Sheet & Cash Flow Statement

(Figures in thousands, except per share amounts and EPS)

	Full Year			2006 (unaudited)			
	2004	2005	2006	Q1	Q2	Q3	
Cash & Marketable Securities	2,132,297	8,034,247	11,243,914	8,429,028	9,821,632	10,428,715	11,
Accounts Receivable	311,836	687,976	1,322,340	844,378	885,088	1,031,055	1,
DSO (in days, using ending AR)	36	41	46	34	33	35	
Property and equipment, net	378,916	961,749	2,395,239	1,209,681	1,799,766	2,174,314	2,
Total Assets	3,313,351	10,271,813	18,473,351	11,294,870	14,396,006	15,693,232	18,
Cash Flow from Operations	977,044	2,459,422	3,580,508	824,804	840,586	1,004,324	
Capital Expenditures	318,995	838,217	1,902,798	344,938	699,000	492,222	

Supplemental Information

(Figures in thousands, except per share amounts and EPS)

	Full Year			2006 (unaudited)			
	2004	2005	2006	Q1	Q2	Q3	Q4
Stock-based compensation	278,746	200,709	458,100	114,664	109,149	99,860	134,427
Int'l revenues as % of Total Revenues	34%	39%	43%	42%	42%	44%	44%
Ending Permanent Headcount	3,021	5,680	10,674	6,790	7,942	9,378	10,674
Sequential Headcount Growth Rate	*86%*	*88%*	*88%*	*20%*	*17%*	*18%*	*14%*

* Includes stock-based compensation charges

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Full year Financial Tables with **2008**, 2007, 2006, 2005, 2004, 2003 quarterly data

Income Statement

(Figures in thousands, except per share amounts and EPS)

	Full Year			2008 (unaudited)		
Revenues	2005	2006	2007	Q1	Q2	Q3 **
Revenues	6,138,560	10,604,917	16,593,986	5,186,043	5,367,212	5,541,391
Y/Y Growth Rate	*92%*	*73%*	*56%*	*42%*	*39%*	*31%*
Q/Q Growth Rate	*NA*	*NA*	*NA*	*7%*	*3%*	*3%*
Google web sites	3,377,061	6,332,797	10,624,705	3,400,405	3,530,145	3,672,111
Y/Y Growth Rate	*113%*	*88%*	*68%*	*49%*	*42%*	*34%*
Q/Q Growth Rate	*NA*	*NA*	*NA*	*9%*	*4%*	*4%*
Google Network web sites	2,687,942	4,159,831	5,787,938	1,686,141	1,655,280	1,679,861
Y/Y Growth Rate	*73%*	*55%*	*39%*	*25%*	*22%*	*15%*
Q/Q Growth Rate	*NA*	*NA*	*NA*	*3%*	*-2%*	*1%*
Total Advertising Revenues	6,065,003	10,492,628	16,412,643	5,086,546	5,185,425	5,351,972
Y/Y Growth Rate	*93%*	*73%*	*56%*	*40%*	*35%*	*28%*
Q/Q Growth Rate	*NA*	*NA*	*NA*	*7%*	*2%*	*3%*
Licensing & other revenues	73,558	112,289	181,343	99,497	181,787	189,419
Y/Y Growth Rate	*60%*	*53%*	*61%*	*172%*	*440%*	*352%*
Q/Q Growth Rate	*NA*	*NA*	*NA*	*44%*	*83%*	*4%*
As % of Revenues						
Google web sites	*55%*	*60%*	*64%*	*66%*	*66%*	*67%*
Google Network web sites	*44%*	*39%*	*35%*	*33%*	*31%*	*30%*
Licensing & other revenue	*1%*	*1%*	*1%*	*1%*	*3%*	*3%*

Cost	Full Year 2005	2006	2007	2008 (unaudited) Q1	Q2	Q3 **
Cost of Revenues*	2,577,088	4,225,027	6,649,085	2,110,536	2,147,575	2,173,390
As % of Revenues	*42%*	*40%*	*40%*	*41%*	*40%*	*39%*
Traffic Acquisition Cost	2,114,942	3,308,777	4,933,878	1,486,384	1,473,980	1,495,206
As % of Revenues	*34%*	*31%*	*30%*	*29%*	*27%*	*27%*
Other Cost of Revenues*	462,146	916,250	1,715,207	624,152	673,595	678,184
As % of Revenues	*8%*	*9%*	*10%*	*12%*	*13%*	*12%*
Research & Development*	599,510	1,228,589	2,119,985	673,069	682,210	704,571
As % of Revenues	*10%*	*12%*	*13%*	*13%*	*13%*	*13%*
Sales & Marketing*	468,152	849,518	1,461,266	446,898	484,552	508,801
As % of Revenues	*8%*	*8%*	*9%*	*9%*	*9%*	*9%*
General & Administrative*	386,532	751,787	1,279,250	409,305	474,910	507,064
As % of Revenues	*6%*	*7%*	*8%*	*8%*	*9%*	*9%*
Settlement of dispute with Yahoo!	NA	NA	NA	NA	NA	NA
As % of Revenues	*NA*	*NA*	*NA*	*NA*	*NA*	*NA*
Contribution to Google Foundation	90,000	NA	NA	NA	NA	NA
As % of Revenues	*1%*	*NA*	*NA*	*NA*	*NA*	*NA*
Total Costs & Expenses*	4,121,282	7,054,921	11,509,586	3,639,808	3,789,247	3,893,826
Y/Y Growth Rate	*62%*	*71%*	*69%*	*49%*	*37%*	*34%*
Q/Q Growth Rate	*NA*	*NA*	*NA*	*7%*	*4%*	*3%*

Profitability	Full Year 2005	2006	2007	2008 (unaudited) Q1	Q2	Q3 **
Income from operations	2,017,278	3,549,996	5,084,400	1,546,235	1,577,965	1,647,565
As % of Revenues	*33%*	*33%*	*31%*	*30%*	*29%*	*30%*
Net Income	1,465,397	3,077,446	4,203,720	1,307,086	1,247,391	1,289,938
As % of Revenues	*24%*	*29%*	*25%*	*25%*	*23%*	*23%*
EPS (As reported)						
Basic	$ 5.31	$ 10.21	$ 13.53	$ 4.17	$ 3.97	$ 4.10
Diluted	$ 5.02	$ 9.94	$ 13.29	$ 4.12	$ 3.92	$ 4.06
Number of Shares ('000)						
Basic	275,844	301,403	310,806	313,129	313,817	314,241
Diluted	291,874	309,548	316,210	317,392	318,023	317,776

Balance Sheet & Cash Flow Statement

(Figures in thousands, except per share amounts and EPS)

	Full Year			2008 (unaudited)		
	2005	2006	2007	Q1	Q2	Q3 **
Cash & Marketable Securities	8,034,247	11,243,914	14,218,613	12,134,508	12,733,669	14,412,609
Accounts Receivable	687,976	1,322,340	2,162,521	2,560,909	2,641,901	2,541,492
DSO (in days, using ending AR)	41	46	48	45	45	42
Property and equipment, net	961,749	2,395,239	4,039,261	4,741,724	5,137,710	5,213,167
Total Assets	10,271,813	18,473,351	25,335,806	27,604,982	29,179,786	30,806,974
Cash Flow from Operations	2,459,422	3,580,508	5,775,410	1,779,446	1,766,154	2,184,955
Capital Expenditures	838,217	1,902,798	2,402,840	841,597	697,517	451,503

Supplemental Information

(Figures in thousands, except per share amounts and EPS)

	Full Year			2008 (unaudited)		
	2005	2006	2007	Q1	Q2	Q3 **
Stock-based compensation	200,709	458,100	868,646	280,779	272,776	280,039
Int'l revenues as % of Total Revenues	39%	43%	47%	51%	52%	51%
Ending Permanent Headcount	5,680	10,674	16,805	19,156	19,604	20,123
Sequential Headcount Growth Rate	*88%*	*88%*	*57%*	*14%*	*2%*	*3%*

* Includes stock-based compensation charges
** Updated November 12 2008

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EXHIBIT "L" ROGER MARX DESENBERG PATENT APPLICATION IN FRANCE

The documents in Exhibit "L" confirms that the Inventor did apply for a patent in France.

INPI

26 bis, rue de Saint Pétersbourg - 75800 Paris Cedex 08

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BREVET D'INVENTION
CERTIFICAT D'UTILITÉ

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REQUÊTE EN DÉLIVRANCE
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Vos références pour ce dossier (facultatif)

1 NOM ET ADRESSE DU DEMANDEUR OU DU MANDATAIRE À QUI LA CORRESPONDANCE DOIT ÊTRE ADRESSÉE

Maurice Dray
Roger Desenberg
40 rue de la Croix
Apt. 405
Bordeaux, France 33800

Confirmation d'un dépôt par télécopie ☐ N° attribué par l'INPI à la télécopie

2 NATURE DE LA DEMANDE — Cochez l'une des 4 cases ci-contre

Demande de brevet	☒	
Demande de certificat d'utilité	☐	
Demande divisionnaire	☐	
Demande de brevet initiale	N°	Date
ou demande de certificat d'utilité initiale	N°	Date
Transformation d'une demande de brevet européen Demande de brevet initiale	☐ N°	Date

3 TITRE DE L'INVENTION (200 caractères ou espaces maximum)

MARCHÉ DE TRAVAIL SUR L'INTERNET, QUI EST ÉCONOMIQUEMENT JUSTE, AVEC LES LOGICIEL OBJETS DU COEUR FRANÇAIS

4 DÉCLARATION DE PRIORITÉ OU REQUÊTE DU BÉNÉFICE DE LA DATE DE DÉPÔT D'UNE DEMANDE ANTÉRIEURE FRANÇAISE

Pays ou organisation		
Date 22/07/1999	N° 60/144,984	Etats-Unis d'Amériqu
Pays ou organisation		
Date 22/07/2000	N° 09/621,663	Etats-Unis d'Amériqu
Pays ou organisation		
Date 20/07/2005	N° 05 07729	France

☐ S'il y a d'autres priorités, cochez la case et utilisez l'imprimé «Suite»

5 DEMANDEUR (Cochez l'une des 2 cases) ☐ Personne morale ☒ Personne physique

Nom ou dénomination sociale		DESENBERG
Prénoms		Roger Marx
Forme juridique		
N° SIREN		
Code APE-NAF		
Domicile ou siège	Rue	750 North Tamiami Trail, Suite 404
	Code postal et ville	34236 Sarasota, Florida
	Pays	USA
Nationalité		Américain
N° de téléphone (facultatif)		1.718.701.4977 N° de télécopie (facultatif)
Adresse électronique (facultatif)		roger@desenberg.com

☐ S'il y a plus d'un demandeur, cochez la case et utilisez l'imprimé «Suite»

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BREVET D'INVENTION
CERTIFICAT D'UTILITÉ

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DB 540 BW/010505

1 MANDATAIRE (si désigné)

Nom	
Prénom	
Cabinet ou Société	
Nationalité	
N° de pouvoir permanent et/ou de lien contractuel	
Adresse — Rue	
Adresse — Code postal et ville	
Adresse — Pays	
N° de téléphone (facultatif)	
N° de télécopie (facultatif)	
Adresse électronique (facultatif)	

2 INVENTEUR(S) — Les inventeurs sont nécessairement des personnes physiques

Les demandeurs et les inventeurs sont les mêmes personnes — [X] Oui [ ] Non : Dans ce cas remplir le formulaire de Désignation d'inventeur(s)

3 RAPPORT DE RECHERCHE — (uniquement pour une demande de brevet (y compris division et transformation))

Établissement immédiat ou établissement différé — [X] [ ] Choix à faire obligatoirement au dépôt (cf. Notice explicative Rubrique 8)

9 RÉDUCTION DU TAUX DES REDEVANCES
(cf. Notice explicative Rubrique 9)

[X] Personne(s) physique(s)
[ ] PME
[ ] Organisme à but non lucratif dans le domaine de l'enseignement ou de la recherche

10 SÉQUENCES DE NUCLÉOTIDES ET/OU D'ACIDES AMINÉS

[ ] Cochez la case si la description contient une liste de séquences

Le support électronique de données est joint — [ ]

La déclaration de conformité de la liste de séquences sur support papier avec le support électronique de données est jointe — [ ]

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11 SIGNATURE DU DEMANDEUR OU DU MANDATAIRE
(Nom et qualité du signataire)

Roger Marx Desenberg

VISA DE LA PRÉFECTURE OU DE L'INPI

Conformément aux articles 26 et 27 de la loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés, les informations portées sur ces formulaires sont enregistrées par l'INPI. Elles sont nécessaires pour traiter votre demande et sont destinées aux services compétents de l'INPI ainsi qu'aux organismes habilités par la loi. Vous pouvez exercer votre droit d'accès et de rectification auprès de l'INPI.

RÉPUBLIQUE FRANÇAISE

DÉPARTEMENT DES BREVETS

INPI
INSTITUT NATIONAL DE LA PROPRIÉTÉ INDUSTRIELLE

DRAY MAURICE
ROGER DESENBERG
40 RUE DE LA CROIX APP 405
33800 BORDEAUX

OBJET : Demande de brevet d'invention ou de certificat d'utilité N° 06 04181

Autorisation de divulgation et d'exploitation
Articles L. 612-8 à L. 612-10
du code de la propriété intellectuelle

V/Réf :

Paris, le 08 juin 2006

Madame, Monsieur,

J'ai l'honneur de vous faire connaître qu'après avis du Ministre chargé de la Défense, habilité à prendre connaissance, à titre confidentiel, des demandes de brevet ou de certificat d'utilité auprès de l'Institut National de la Propriété Industrielle, l'autorisation de divulguer et d'exploiter l'invention, objet de la demande ci-dessus désignée, vous est accordée.

Cette autorisation a pour seul effet de vous délier de l'obligation de secret à laquelle vous étiez tenu, à l'égard des impératifs de la Défense Nationale.

L'instruction de votre dossier va se poursuivre en vue d'examiner sa conformité au regard des exigences des textes législatifs et réglementaires en vigueur.

Veuillez agréer, Madame, Monsieur, l'expression de ma considération distinguée.

Pour le Directeur Général de l'Institut National
de la Propriété Industrielle
Le Chef du Département des Brevets

Martine PLANCHE

INSTITUT NATIONAL DE
SIEGE
26 bis, rue de Saint Pétersbourg
75800 PARIS cedex 08

EXHIBIT "M" PATENT 7,139,732 CLAIM DECONSTRUCTION DOCUMENTS

The documents in Exhibit "M" are two claim deconstruction documents of Claim 1 of Patent 7,139,732. The first one was written by Roger Marx Desenberg, and the second was written by Kenyon & Kenyon who requested that the document not be used or released to anyone.

Proof that AdWords Infringes Patent 732 (7,139,732) -

IMPORTANT: According to patent examiner - as long as it can be proved that the following things occur in at least one method, then the infringer infringes. Hence, it is claimed the following scenario ALWAYS occurs at least once, during a given time period, in the max price systems the INFRINGERS use. But not all of the scenarios or transactions that the infringer facillitates infringe on this claim. In other words, if it is proven that this scenario happens ONCE, then they infringe. It does not have to be proven that these things happen on EVERY transaction or EVERY scenario. That's the way the patent examiner and the USPTO set up patent law. So as you go through this, always use an appropriate scenario, like you are looking for a plumber in New York, that is hired, and paid for services.

The scenarios like the plumber, which infringe on claim 1, are in fact the scenarios where people are paying big money for the leads. Claim 1 has been seperated into phrases for analysis.

	Does Google's AdWords Infringe when Ads Pop up on the right side?	Does AdWords Infringe with the Plumber Scenario when someone actually buys the service?	
A method for a user using a communication network	ALWAYS	ALWAYS	
search for and identify at least one matching provider of project work	SOMETIMES	ALWAYS	This occurs when the searcher is looking for some kind of service, such as shipping services (to have products shipped), or plumbing services, or legal services, or painting services, etc. This is what "project work" is, and we feel that project work represents a broader description of property than service. We preferred the word "services" which is throughout the original application, but the examiner insisted on "project work", which we accepted.
transmission of a lead comprising contact information that enables communication between the user and the provider	ALWAYS	ALWAYS	When an AdWords ad pops up on the right side, this is transmission of a lead to the customer- which is the vendor's contact information.
transaction lead price is the amount of money paid for the lead	SOMETIMES	ALWAYS	If someone clicks, they pay a transaction lead price

wherein a service is performed by the user or the provider as a result of the tranmission of the lead	SOMETIMES	ALWAYS	This was forced in by the examiner, this is not part of our invention, but in the end, no one would pay for leads if they didn't get business. So we can always prove this occurs by having witnesses that used the search engine, and hired someone they found. The examiner, by requiring this, has increased legal costs for everyone, but it is true, it is not difficult to prove that at least one service is facilitated by at least one lead.
wherein the performance of the service includes a service transaction fee paid by the user or the provider	SOMETIMES	ALWAYS	Another forced one by the patent examiner. This means a lead option engine for volunteers would not be covered. This isn't fair, but, in the end, should not matter. So our claim only covers paid services, or project work.
storing in a database at least first provider information and second provider information, the at least first provider information and the at least second provider representing at least respective maximum lead prices, each of the respective maximum lead prices representing the maximum amount that each of at least a first provider and a second provider is willing to pay for an lead, wherein each of the at least first and second providers provide at least one service with which the lead is associated;	ALWAYS	ALWAYS	This is evident by looking at the screens.
comparing the respective maximum lead prices to determine a lowest respective maximum lead price;	ALWAYS	ALWAYS	Even though other sorting critieria may be used, sorting by the max price is always going on
identifying the provider associated with the lowest one of the respective maximum lead prices;	ALWAYS	ALWAYS	This was my previous incompetent patent attorney's way of defining sorting. It's mathematically correct, but should be amended to read "sort by maximum price" or something like that. It's awkward, but it's no deal killer.
receiving at least one lead limit that represents a maximum quantity of leads to be provided;	ALWAYS	ALWAYS	AdWords always limit the number of leads per page, or else they would list thousands and millions of vendors. So the lead limit is the number of leads that appears on one page. There has to be a lead limit... otherwise the system won't work.

receiving from a user or provider a request for contact information, the contact information enabling communication between the user and at least one of the first provider and the second provider;	SOMETIMES	ALWAYS	If I am looking for a plumber, and I enter in plumber, I am, undoubtedly, asking for contact information to contact the plumber. So in at least one scenario, this is true.
selecting at least one provider based on each respective provider's maximum lead price and the lead limit;	ALWAYS	ALWAYS	AdWords may use some pre or post processing to filter out certain vendors from popping up, such as trying to forecast which ones are most likely to be clicked, and picking those to list. But the maximum price and the lead limit are always used in some way in deteriming who comes up. This can be proven by purchasing keywords, entering a very high max price, and then showing the contact information being listed as an ad after a search, and then entering a low max price, and then showing how the lead information is not being listed on the same search.
calculating a respective transaction lead price for each of the at least one selected provider,	SOMETIMES	ALWAYS	When AdWords charges a customer a pay-per-click amount, that is the transaction lead price, so this always occurs when someone pays.
the respective transaction lead price equals at most each respective selected provider's maximum lead price;	ALWAYS	ALWAYS	No one ever pays more than the maximum price.
and providing the at least one lead to the user or provider for project work.	ALWAYS	ALWAYS	providing a lead to the user or provider always occurs when an Ad pops up on the right side. Our methods are limited to "project work" which we define as a transaction that involves a significant portion of services. Services can be plumbing services, or shipping services. So even retail goods infringe if most of the cost of the transaction is for services, which is really what retail shops offer. So project work covers a lot of transactions.

Draft—Attorney Work Product/Attorney Client Communication
For discussion purposes only - Patent 7,139,732

The following document was created by a top ten Intellectual Property Law New York City law firm. The firm analyzed Roger Desenberg's claim chart spreadsheet, and rewrote the spreadsheet with their comments below. The firm verbally affirmed that they would gladly represent Mr. Desenberg to handle the case, and that they thought the case has a very good chance at winning in a court of law. Due to legal reasons, the firm was unwilling to write a letter stating what the firm verbally told Mr. Desenberg and his associates.

Claim Element	Initial Claim Review	Google	Discussion
1.A. A method for a user using a communication network to search for and identify at least one matching provider of project work, the method comprising;	The provider is the one who performs the project work. This is made clear in part G below – the one who "provide[s] at least one service." Therefore, the user is the one who needs work performed. Project work and service is mentioned in the claim. Referring to the abstract, it seems that project work is a specific instance of performance of a service generally provided. That is, a provider generally performs a service and a user seeks a service provider to provide that service in a particular instance for the user.	Google provides a method for a user using the Internet to search for and identify providers of services performed for a project. The user may enter keywords, which are matched to keywords submitted by the provider.	
B. transmission of a lead comprising contact information that enables communication	This could be read as **"at least one lead"** since part O refers to "the at least one lead." The reference to at least one is probably based	Google provides for transmission of links identifying service providers to users of the search engine based on	Transmission of the lead reads on transmission of the link to the

between the user and the provider,	on the preamble which indicates that the search is for at least one matching provider. Thus, the lead of part B refers to that which is the identified at least one matching provider. Thus, a lead may be any information that identifies at least one matching provider of project work and that includes contact information.	matching of keywords. The link includes an address for further communication between the user and provider by allowing the user to click on the link to access the provider's page. Further, when a link is clicked by the user, the corresponding service provider's contact information included in the provider's Web page is provided to the user, which enables the user to further contact and communicate with the provider.	results page and also reads on transmission of the provider's page when a link is clicked.
C. wherein the transaction lead price is the amount of money paid for the lead,	This could be read as "wherein ***a*** transaction lead price . . . ." However a "transaction lead price" is never referred to again in the claim. (Only a "maximum lead price" is provided and separately defined in part F.) Thus, this, standing alone, does not limit the claim.		
D. and further wherein a service is performed by the user or the provider as a result of the tranmission of the lead	An act must be performed by either the user or the provider because of the lead's transmission.	When a user and provider communicate after finding each other via Google AdWords, an act is often provided by the provider for the user.	
E. and wherein the performance of the service includes a service transaction fee paid by the user or the provider;	Particularly in view of the language of the claim as previously presented which part E replaces, the term "service transaction fee" could be interpreted broadly to mean "any fee associated with a service transaction	A provider advertising in Google generally charges a fee paid by the user in consideration for the performed service.	

	entered into due to a lead." This may include a fee paid in consideration for a performed service (paid by a user) and a fee paid in consideration for arranging the communication between provider and user (which can be paid by the provider).		
F. storing in a database at least first provider information and second provider information, the at least first provider information and the at least second provider representing at least respective maximum lead prices, each of the respective maximum lead prices representing the maximum amount that each of at least a first provider and a second provider is willing to pay for an lead,	For each service provider, a respective maximum amount the provider is willing to pay per lead is stored in a database.	Each advertiser indicates the most the advertiser is willing to pay for each click by a user of the link to the advertiser's page.	The provider indicates the most the provider is willing to pay for a link to be clicked on. The provider indicates the most the provider is willing to pay for the provider's page to be provided (when a link is clicked on).
G. wherein each of the at least first and second providers provide at least one service with which the lead is associated;	Each provider must provide at least one service associated with one or more of the at least one transmitted lead.	The advertisers provide the advertised services which are associated with the link or page provided to the user when the user clicks on the link.	
H. comparing the respective maximum lead prices to determine a lowest respective maximum lead price;	The stored maximum lead prices of at least two service providers must be considered as analogous values for determining a lowest of a set of maximum lead prices respectively associated with different ones of the at least two	Google considers as analogous respective indicated maximum CPCs for determining a lowest of a set of weighted maximum CPCs respectively assigned to each of at least two users, for determining rank.	See part L and comment there. It might be argued that "determine a lowest respective maximum lead price" means determine a

	providers.		lowest one of the set of respective maximum lead prices that are stored in the database.
I. identifying the provider associated with the lowest one of the respective maximum lead prices;	Identify which one of the at least two service providers is associated with the lowest of the set of maximum lead prices referred to in part H.	Google identifies the provider associated with the lowest one of the weighted maximum CPCs by displaying the provider's link below all of the other displayed links of the other providers.	
J. receiving at least one lead limit that represents a maximum quantity of leads to be provided;		Google receives a budget which limits the number of clicks of a provider's link and thus limits the number of times the provider's page will be displayed. Further, a processor receives a value representing a limit of the number of links to be provided on a single results page.	If the page is the lead, the budget is the lead limit.
K. receiving from a user or provider a request for contact information, the contact information enabling communication between the user and at least one of the first provider and the second provider;		A user enters keywords as search parameters for a search of advertisers and their respective links, the links being displayed in response to the keyword entries. The links enable communication between the user and at least one of the providers for which max CPCs were stored.	
L. selecting at least one provider based on each respective provider's maximum		Google selects providers whose links are to be displayed in response to a user's keyword search.	

lead price and the lead limit;		Whether a provider is selected depends on whether the provider's maximum CPC is equal to or greater than a determined minimum CPC and also on whether the provider's budget allows for payment of fee for a click that is as high as the determined minimum CPC (is this right?). Further, once it is determined that the provider's link can be provided, provider is selected for providing the respective link on a particular page depending on the provider's rank position and the number of links that can be provided on the page.	
M. calculating a respective transaction lead price for each of the at least one selected provider,	See part C above. a transaction lead price is an amount of money paid for the lead. Thus, part M requires calculating for each of the providers a respective price the provider must pay for the lead.	Google calculates a price per click for each provider. For a particular provider, the particular provider's costs is calculated as the greater of (a) the nearest lower ranked provider's rank number divided by the particular provider's quality score plus 1 cent and (b) the particular provider's calculated minimum CPC.	The cost is for clicking on a provided lead if the link is considered the lead, and is for providing the link if the provider's page is considered the lead.
N. wherein the respective transaction lead price equals at most each respective selected provider's maximum lead price;		The actual CPC calculated in M is always less than or equal to the particular provider's indicated maximum CPC. Otherwise, either the provider would not have been selected to take part in the results page because of having a max CPC	Same comment as in part L.

		below the calculated minimum CPC or the particular provider would not have been ranked above the lower ranked provider.	
O. and providing the at least one lead to the user or provider for project work.		Each one of the links and pages that are transmitted are provided on a display to a user.	

EXHIBIT "N" PATENT 7,139,732 GRAPHICAL REPRESENTATION

The documents in Exhibit "N" is a graphical representation of the Maximum Price system, the core of Patent 732 technology.

Infringers and the LOE, both, do all of these processes.
BOLD means covered in claim 1, ***BoldItalic*** means covered in dependant claims.

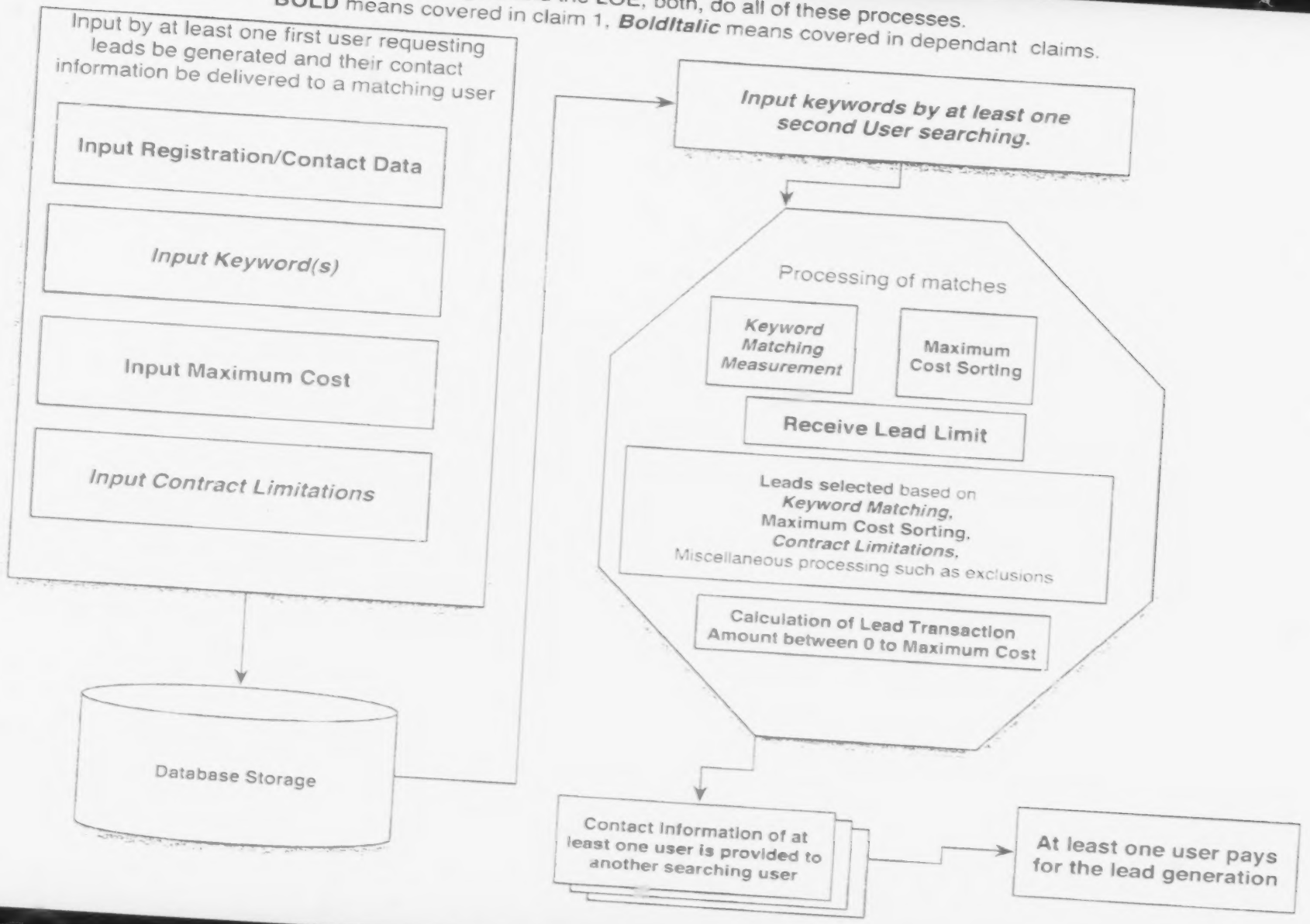

EXHIBIT "O" EBAY-MERCEXCHANGE CASE WITH LETTER FROM CHIEF JUSTICE ROBERTS, JR.

The documents in Exhibit "O" is a letter written to the Supreme Court Chief Justice Roberts Jr., a response letter from the Chief Justice to Roger Marx Desenberg, and the Ebay/MercExchange decision.

First Official Guide to Internet Architecture Assembly

RMD INTERNET ARCHITECTURE

CHIEF INTERNET ARCHITECT

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rmdia.com/portfolio
licensedinternetarchitect.com
intonomics.net
http://leadoptionengine.com/content/loe.wmv

March 28, 2006

Honorable Chief Justice John G. Roberts, Jr.
Supreme Court of the United States
One First Street N.E.
Washington, DC 20543

RE: eBay vs. MercExchange

Being one of the most **experienced and educated Internet Economists** in the United States, it is extremely frustrating for me to witness the misdirection and inappropriate behavior of our Intellectual Property sector as it relates to business method patents and the Internet.

Currently I am **working diligently to contact and educate various government representatives** and officials to help the government implement the Internet related Intellectual Property changes this country needs desperately. I recently met Mr. Jon Dudas of the USPTO and submitted several USPTO proposals which are being reviewed and considered. I also met with Government Reform Committee staff where I was well received.

The eBay/MercExchange case has particular relevance to my businesses, since my patent pending technology covers a considerably larger economic sub-sector than eBay's auction and purchasing systems. It seems **my patent pending technology may soon be involved in the next landmark patent case.**

The USPTO, combined with appropriate legislation, eventually will implement the changes needed to create a balanced and sensible Intellectual Property environment. **But until then, the entire US Internet economy, will remain in uncertainty and disarray.**

Thus, I want to communicate to the Supreme Court, at this sensitive time, **the truth about where the problems are with our Intellectual Property behaviors**. After the Supreme Court understands exactly how Intellectual Property should be, and will be governed, I am confident the Supreme Court will be able to make proper decisions. But please realize, only Internet Economists with extensive software and economic experience and education, have the background to lead the education of the US government in **understanding how Intellectual Property must be governed in the future** to create a healthy Internet economic environment.

Following is a **summary of the most important eBay/MercExchange issues**. Also included is access to two documents. One is a 30 slide presentation of USPTO proposed changes submitted in March of 2006. The other is a 17 page section of my book outlining needed patent and Internet related legislation.

In the eBay/MercExchange case, the following issues are the most important:

1. **Asking the correct questions** is the most important issue. I applaud the Supreme Court for asking the correct questions thus far. In particular, "**Why should business method patents be granted?**" is one of the appropriate questions already asked that should be analyzed. The answer to this question leads understanding "How" business method patents should be claimed and governed. After the Why and How of business method patents existence has been answered, the next question of "Should MercExchange have a patent?" will be easy to answer. And then the answer to the final question, "Is injunctive relief appropriate in this case?" will be evident.
2. **The USPTO is currently misguided** by inappropriate rules, regulations, and objectives concerning Internet patents which results in many patents being issued that should not be issued. **This will change, but until then, we will all be in a state of uncertainty and disarray. Appropriate decisions by the Supreme Court is needed now.**
3. **In the Internet space, patents should NEVER be granted monopoly rights.** It is never appropriate or beneficial for inventors, companies, government, or the public, for Internet patents to have monopoly rights. Instead, each Internet patent should have a distribution section outlining the methods of how the invented technology will be distributed throughout society. This change will require new legislation.

4. Internet Patents should only be awarded for Internet technology that requires regulation and control. **The powers granted by an Internet patent should be for the regulation, auditing, and quality control of the Internet technology, and especially to support economically fair marketplaces. The Internet patent should not be used to limit the implementation of the invented technology to only one entity.**
5. **Injunctive relief is probably still the only action that enforces patents, and makes them real.**

If a patent is correctly formulated, with appropriate distribution rules, any company infringing on a patent should be required to pay reasonable fees to the patent assignee, and should be required to have the technology audited by the patent assignee to **prevent crime**, and to ensure **quality standards** are maintained, and **emarketplaces are economically fair.** If the infringer or licensee is not paying the appropriate fees, or is not willing to be audited appropriately, or is creating an architecture that promotes crime, or does not maintain appropriate quality standards, then injunctive relief is an appropriate action.

In the eBay/MercExchange case, the problem is that the patent should never have been issued. The supposed invention as stipulated in the claims involves negotiating business between a vendor and a customer, where the vendor can run an auction, and at the same time also accept an offer of some kind for goods. Not only is the invention obvious, but **this kind of business method has already been conducted for thousands of years.** There is nothing new, except the Internet. Further, there seems to be little reason that the claimed invention needs regulation to prevent crime.

To understand why the MercExchange patent should not have been issued, it is appropriate to discuss an example of an Internet patent that does need regulation to prevent crime, such as the PriceLine patent. The PriceLine system involves a reverse auction where the customer stipulates a price, and vendors can choose to accept or reject the offer. The PriceLine system works well for the air travel and for hotel room purchasing. The crime that can occur in this scenario, is an unscrupulous reverse auction marketplace owner can manipulate the software so only certain airlines and hotels of their choice will be chosen. Thus an unscrupulous reverse auction marketplace can advertise that many hotels are involved to gather customers and vendors, and actually only use certain vendors, or perhaps only their own hotels. This kind of criminal activity can keep vendors out of a marketplace, and thus the marketplace would not be **economically fair.** PriceLine's patented business method was not possible before the advent of the Internet. Thus the PriceLine patent is a good example of an Internet patent that should be issued and can benefit the economy.

An **example of criminal activity**, reported by the **New York Times** on March 28, 2006: "Marsh, the nation's largest property and casualty brokerage firm, settled with Mr. Spitzer last year for $850 million over allegations of **bid rigging** and price fixing as well as hidden commissions."
There are many other bid rigging problems just starting to surface on the non-Internet and Internet marketplaces. And more criminal marketplace activity will occur unless regulated and contained. Regulation via patents is the most powerful tool to prevent marketplace crimes and ensure marketplaces are **economically fair.**

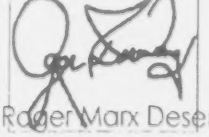
With the MercExchange patent, there does not seem to be any reason for regulation for quality control or to ensure economically fair marketplace practices. The customer can bid, or for a set price, purchase immediately. It's that simple. Such a system does not require the Internet to operate, and this kind of business has been occurring for decades. If someone wants to buy something, and someone wants to sell something, that is their own business. The MercExchange patent is an example of a patent that should never have been issued. Even I wrote an online auction software system to buy and sell goods prior to 1989.

I **am available to speak, write**, or otherwise communicate these ideas and issues to any interested parties. It is paramount that the Supreme Court educate themselves as to how Internet patents should and will be governed. Then the Supreme Court can competently make appropriate decisions until the USPTO and patent legislation matures. When our Intellectual Property system is properly implemented we will all be able to enjoy a healthy and **economically fair Internet Intellectual Property economic environment**.

I respectfully request to be an expert witness in the eBay/MercExchange case.

Here are **links to the enclosed documents** if you prefer to see them online:
Document 1: http://www.oglia.org/InternetHandbookGovtPatent.pdf
Document 2: http://rogermarxdray.com/GovtReformProposalVer10.pdf
Here is a link to **my background** http://www.ipfrontline.com/aboutsource.asp?editorid=340

Sincerely,



Roger Marx Desenberg
Chief Internet Architect and Economist

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 17, 2006

Mr. Roger Marx Desenberg
200 Central Park South
Suite 16K
New York, NY 10019

Dear Mr. Desenberg,

Thank you for your recent letter of March 28, 2006. I appreciate your thoughts and wishes.

Sincerely,

John G. Roberts, Jr.

SUPREME COURT OF THE UNITED STATES

No. 05–130

EBAY INC., ET AL., PETITIONERS *v.*
MERCEXCHANGE, L. L. C.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[May 15, 2006]

CHIEF JUSTICE ROBERTS, with whom JUSTICE SCALIA and JUSTICE GINSBURG join, concurring.

I agree with the Court's holding that "the decision whether to grant or deny injunctive relief rests within the equitable discretion of the district courts, and that such discretion must be exercised consistent with traditional principles of equity, in patent disputes no less than in other cases governed by such standards," *ante*, at 5, and I join the opinion of the Court. That opinion rightly rests on the proposition that "a major departure from the long tradition of equity practice should not be lightly implied." *Weinberger* v. *Romero-Barcelo*, 456 U. S. 305, 320 (1982); see *ante*, at 3.

From at least the early 19th century, courts have granted injunctive relief upon a finding of infringement in the vast majority of patent cases. This "long tradition of equity practice" is not surprising, given the difficulty of protecting a right to *exclude* through monetary remedies that allow an infringer to *use* an invention against the patentee's wishes—a difficulty that often implicates the first two factors of the traditional four-factor test. This historical practice, as the Court holds, does not *entitle* a patentee to a permanent injunction or justify a *general rule* that such injunctions should issue. The Federal Circuit itself so recognized in *Roche Products, Inc.* v. *Bolar Pharma-*

ceutical Co., 733 F. 2d 858, 865–867 (1984). At the same time, there is a difference between exercising equitable discretion pursuant to the established four-factor test and writing on an entirely clean slate. "Discretion is not whim, and limiting discretion according to legal standards helps promote the basic principle of justice that like cases should be decided alike." *Martin* v. *Franklin Capital Corp.*, 546 U. S. ___, ___ (2005) (slip op., at 6). When it comes to discerning and applying those standards, in this area as others, "a page of history is worth a volume of logic." *New York Trust Co.* v. *Eisner*, 256 U. S. 345, 349 (1921) (opinion for the Court by Holmes, J.).

NOTICE. This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 05–130

EBAY INC., ET AL., PETITIONERS *v.*
MERCEXCHANGE, L. L. C.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[May 15, 2006]

JUSTICE THOMAS delivered the opinion of the Court.

Ordinarily, a federal court considering whether to award permanent injunctive relief to a prevailing plaintiff applies the four-factor test historically employed by courts of equity. Petitioners eBay Inc. and Half.com, Inc., argue that this traditional test applies to disputes arising under the Patent Act. We agree and, accordingly, vacate the judgment of the Court of Appeals.

I

Petitioner eBay operates a popular Internet Web site that allows private sellers to list goods they wish to sell, either through an auction or at a fixed price. Petitioner Half.com, now a wholly owned subsidiary of eBay, operates a similar Web site. Respondent MercExchange, L. L. C., holds a number of patents, including a business method patent for an electronic market designed to facilitate the sale of goods between private individuals by establishing a central authority to promote trust among participants. See U. S. Patent No. 5,845,265. MercExchange sought to license its patent to eBay and Half.com, as it had previously done with other companies, but the

parties failed to reach an agreement. MercExchange subsequently filed a patent infringement suit against eBay and Half.com in the United States District Court for the Eastern District of Virginia. A jury found that MercExchange's patent was valid, that eBay and Half.com had infringed that patent, and that an award of damages was appropriate.[1]

Following the jury verdict, the District Court denied MercExchange's motion for permanent injunctive relief. 275 F. Supp. 2d 695 (2003). The Court of Appeals for the Federal Circuit reversed, applying its "general rule that courts will issue permanent injunctions against patent infringement absent exceptional circumstances." 401 F. 3d 1323, 1339 (2005). We granted certiorari to determine the appropriateness of this general rule. 546 U. S ___ (2005).

II

According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. See, *e.g.*, *Weinberger* v. *Romero-Barcelo*, 456 U. S. 305, 311–313 (1982); *Amoco Production Co.* v. *Gambell*, 480 U. S. 531, 542 (1987). The decision to grant or deny permanent injunctive relief is an act of equitable discretion by the district court, reviewable on appeal for abuse of discretion. See, *e.g.*, *Romero-*

[1] EBay and Half.com continue to challenge the validity of MercExchange's patent in proceedings pending before the United States Patent and Trademark Office.

Barcelo, 456 U. S., at 320.

These familiar principles apply with equal force to disputes arising under the Patent Act. As this Court has long recognized, "a major departure from the long tradition of equity practice should not be lightly implied." *Ibid.*; see also *Amoco*, *supra*, at 542. Nothing in the Patent Act indicates that Congress intended such a departure. To the contrary, the Patent Act expressly provides that injunctions "may" issue "in accordance with the principles of equity." 35 U. S. C. §283.[2]

To be sure, the Patent Act also declares that "patents shall have the attributes of personal property," §261, including "the right to exclude others from making, using, offering for sale, or selling the invention," §154(a)(1). According to the Court of Appeals, this statutory right to exclude alone justifies its general rule in favor of permanent injunctive relief. 401 F. 3d, at 1338. But the creation of a right is distinct from the provision of remedies for violations of that right. Indeed, the Patent Act itself indicates that patents shall have the attributes of personal property "[s]ubject to the provisions of this title," 35 U. S. C. §261, including, presumably, the provision that injunctive relief "may" issue only "in accordance with the principles of equity," §283.

This approach is consistent with our treatment of injunctions under the Copyright Act. Like a patent owner, a copyright holder possesses "the right to exclude others from using his property." *Fox Film Corp.* v. *Doyal*, 286 U. S. 123, 127 (1932); see also *id.*, at 127–128 ("A copyright, like a patent, is at once the equivalent given by the public for benefits bestowed by the genius and meditations

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[2] Section 283 provides that "[t]he several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable."

and skill of individuals, and the incentive to further efforts for the same important objects" (internal quotation marks omitted)). Like the Patent Act, the Copyright Act provides that courts "may" grant injunctive relief "on such terms as it may deem reasonable to prevent or restrain infringement of a copyright." 17 U. S. C. §502(a). And as in our decision today, this Court has consistently rejected invitations to replace traditional equitable considerations with a rule that an injunction automatically follows a determination that a copyright has been infringed. See, *e.g.*, *New York Times Co.* v. *Tasini*, 533 U. S. 483, 505 (2001) (citing *Campbell* v. *Acuff-Rose Music, Inc.*, 510 U. S. 569, 578, n. 10 (1994)); *Dun* v. *Lumbermen's Credit Assn.*, 209 U. S. 20, 23–24 (1908).

Neither the District Court nor the Court of Appeals below fairly applied these traditional equitable principles in deciding respondent's motion for a permanent injunction. Although the District Court recited the traditional four-factor test, 275 F. Supp. 2d, at 711, it appeared to adopt certain expansive principles suggesting that injunctive relief could not issue in a broad swath of cases. Most notably, it concluded that a "plaintiff's willingness to license its patents" and "its lack of commercial activity in practicing the patents" would be sufficient to establish that the patent holder would not suffer irreparable harm if an injunction did not issue. *Id.*, at 712. But traditional equitable principles do not permit such broad classifications. For example, some patent holders, such as university researchers or self-made inventors, might reasonably prefer to license their patents, rather than undertake efforts to secure the financing necessary to bring their works to market themselves. Such patent holders may be able to satisfy the traditional four-factor test, and we see no basis for categorically denying them the opportunity to do so. To the extent that the District Court adopted such a categorical rule, then, its analysis cannot be squared

with the principles of equity adopted by Congress. The court's categorical rule is also in tension with *Continental Paper Bag Co.* v. *Eastern Paper Bag Co.*, 210 U. S. 405, 422–430 (1908), which rejected the contention that a court of equity has no jurisdiction to grant injunctive relief to a patent holder who has unreasonably declined to use the patent.

In reversing the District Court, the Court of Appeals departed in the opposite direction from the four-factor test. The court articulated a "general rule," unique to patent disputes, "that a permanent injunction will issue once infringement and validity have been adjudged." 401 F. 3d, at 1338. The court further indicated that injunctions should be denied only in the "unusual" case, under "exceptional circumstances" and "'in rare instances . . . to protect the public interest.'" *Id.*, at 1338–1339. Just as the District Court erred in its categorical denial of injunctive relief, the Court of Appeals erred in its categorical grant of such relief. Cf. *Roche Products* v. *Bolar Pharmaceutical Co.*, 733 F. 2d 858, 865 (CAFed 1984) (recognizing the "considerable discretion" district courts have "in determining whether the facts of a situation require it to issue an injunction").

Because we conclude that neither court below correctly applied the traditional four-factor framework that governs the award of injunctive relief, we vacate the judgment of the Court of Appeals, so that the District Court may apply that framework in the first instance. In doing so, we take no position on whether permanent injunctive relief should or should not issue in this particular case, or indeed in any number of other disputes arising under the Patent Act. We hold only that the decision whether to grant or deny injunctive relief rests within the equitable discretion of the district courts, and that such discretion must be exercised consistent with traditional principles of equity, in patent disputes no less than in other cases governed by such standards.

Accordingly, we vacate the judgment of the Court of Appeals, and remand for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

EBAY INC. ET AL. *v.* MERCEXCHANGE, L. L. C.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 05–130. Argued March 29, 2006—Decided May 15, 2006

Petitioners operate popular Internet Web sites that allow private sellers to list goods they wish to sell. Respondent sought to license its business method patent to petitioners, but no agreement was reached. In respondent's subsequent patent infringement suit, a jury found that its patent was valid, that petitioners had infringed the patent, and that damages were appropriate. However, the District Court denied respondent's motion for permanent injunctive relief. In reversing, the Federal Circuit applied its "general rule that courts will issue permanent injunctions against patent infringement absent exceptional circumstances." 401 F. 3d 1323, 1339.

Held: The traditional four-factor test applied by courts of equity when considering whether to award permanent injunctive relief to a prevailing plaintiff applies to disputes arising under the Patent Act. That test requires a plaintiff to demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law are inadequate to compensate for that injury; (3) that considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. The decision to grant or deny such relief is an act of equitable discretion by the district court, reviewable on appeal for abuse of discretion. These principles apply with equal force to Patent Act disputes. "[A] major departure from the long tradition of equity practice should not be lightly implied." *Weinberger* v. *Romero-Barcelo*, 456 U. S. 305, 320. Nothing in the Act indicates such a departure. Pp. 2–6.

401 F. 3d 1323, vacated and remanded.

THOMAS, J., delivered the opinion for a unanimous Court. ROBERTS,

Syllabus

C. J., filed a concurring opinion, in which SCALIA and GINSBURG, JJ., joined. KENNEDY, J., filed a concurring opinion, in which STEVENS, SOUTER and BREYER JJ., joined.

EXHIBIT "P" INVENTOR'S DOCUMENT ABOUT HIS INVENTION

The documents in Exhibit "P" is a document written by the Inventor, Roger Marx Desenberg, outlining the use of the system. This document was available on the Internet prior to Google's implementation of the Maximum Price system.

LeadOptionEngine Business Case:

Creating Internet Marketplaces for Service Industries

Version 1.0
Last Update August 27, 2000

Service Industry Examples:
(Construction, Legal, Pet Care, Software Projects, Car Repair, Personal Care, Catering, Music and Entertainment, Computer Repair, Expert Advice, Healthcare, Cleaning Services, etc.)

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If this document is not in English:

This document was written originally in English and then translated via a software system and hence probably has several translation problems. If you read this document, and find parts that need re-writing please email us at translate@site7.com .Translation considerations we have found are listed here:

- For our discussions we use the abbreviation I.T. often. In English this stand for Information Technology. In English, the first letter in Information is "I", and the first letter for Technology is "T". If this document is not in English, chances are I.T. is not the preferred abbreviation for Information Technology which is used throughout this document.

Introduction

The Internet world between 2000 and 2010 will undergo a tremendous amount of change and development. Compared to cars, we are in the Ford Model T years. There is so much to be done, and there is so much not done. Some people often sound like the patent office clerk back in the day during the last century when someone declared, "We are not taking any more patents! There is nothing left to invent!" So many people think "everything" is already written! When in fact there is so much to do virtually anyone can start developing in new areas and break new ground.

As we get into the LeadOptionEngine we must also address how to create a long term profitable business on the Internet. A lot of Internet businesses today are not driven to creation by a sales process, or the natural needs of supply and demand in the global economic marketplace. Many Internet businesses are driven by investors. Investors influence the creation of the business which is not very accurate in meeting demands of its customers. This often ends up in the creation of Internet businesses that will not work. Focus is often on exit strategies and going public, and not on meeting customer demand, nor creating a long term successful strategy.

One major understanding that is lacking in much of today's investment world is that one successful economic model isn't necessarily one dot com. Often investors envision a good focused business will amount to creating one dot com. But there are many dot com ideas and ventures that will not prove successful, because the rest of the Internet isn't developed enough. To understand, I like the "coming to America during the 1600's and 1700's" scene. Suppose you arrived in America during that time, and suppose you wanted to be in the food distribution business. And suppose you wanted to transport food from California to New York, and that's the business you wanted to be in. Fine. But since there was no railroad, you also had to be in the railroad business, because you needed a railroad. And rail roads need steel, so you needed to also be in the steel manufacturing business. So to transport food, you would have needed to be in several businesses. That's what happening with the Internet today. Internet businesses are missing to complete some economic models.

There are several myths about creating profitable businesses on the Internet:

Myth 1: Be very focused
One recurring idea among some supposed "knowledgeable" investors seems to say "Please focus on one dot com, one company, and with very small focus." They claim that to create a successful business you have to be focused. But guess what? To create an economic environment on the Internet that works, you may have to create 5 dot coms, and run each as an independent business. If you wait until the rest of the world creates everything for you, you may wait a long time, and you may be very late in Internet business model creation. Customer's will never care if you are focused. They only want all the services they need at a quality level they demand.

Myth 2: Attract users and you will be successful
How many web sites attract millions of users but can't turn a profit?
I am not going to list the many web sites here, but there are lots that will not turn a profit. Getting users is OK, creating a profitable Internet business is something else. Virtually any one with venture funding can hire expensive advertising firms, spend lots of money, get users, and even get revenue. But can they make more revenue than their costs? Often this is the hard part.

Myth 3: Building a web site for a business you are NOT in, but where none exists, is a good idea.
Since 1995, I have always thought that if you create a web site for some industry, and you were not in the business, that you are basically creating the web site for free for the other companies in the industry. Most software costs are in design. So if it costs you $20 million to create a wiz bang web site that is new, it may take only $2 million to recreate it based on the new web site created. So that's why I was never interested in creating a web site to transact books, or sofas, or kitchenware. I was not in position to be in those businesses. If I were to create such a web site, I would have partnered up with a sofa manufacturer, or a kitchenware manufacturer, or a book publisher. Eventually everyone will have equivalent web sites, so how do you make money?
One way you can make money is by doing deals on the Internet. Doing product deals is very competitive. It's a great market, but you do have to be well positioned. Another way to make money, is to find work over the net, or to broker work, between service provider and buyer. And this is where our engine comes in. Our engine requires more than one dot com. And this is where we have to build our Internet City.
One of the most powerful ways the Internet can make money is by lowering the transaction costs to make a transaction, and be able to charge very little money to a lot of people. Imagine getting a penny a day from 100 million people. That would be $1 million a day!!! I think in the future those kinds of things will happen. There are ways to make money on the Internet, and it's not all about selling products.

Section 1: Evolution of the LeadOptionEngine

When I set out to create a software economic system, I try to create one that will live in the long term. I never would have written software with dates limiting the functionality to the year 2000, for example. I write to solve the long term problems. That's less work for me, and more time to bare foot ski, or play hoops. And I usually create the system so it works in unlimiting ways. I can often foresee the high level business changes that will occur, and create a living system that will survive without being re-written. Again - more time for soccer and running in the woods.

And so came my challenge in the beginning of 1999: Create a marketplace to transact services. Seems so simple doesn't it? People buy thousands of dollars of products over the net, right? So isn't services just as easy?

The answer: No way.

Why? People are going to use the same processes in conducting business as they always have. When you buy something, you check out the product, price, and delivery options, and you order. Putting mail order catalogs over the net is no big deal technically. Even getting consumers to use it, is easy. All the mail order catalogs did that for us decades ago. How many people did you know that had lots of catalogs and did virtually all their buying mail order? I knew a few. Has the Internet changed their habits a lot? No, not much. A little better service, but they have been doing their shopping at home for decades.

Now how do people do a service deal? Is it service description, price, and delivery? No, far from it. Who wins project work, is in fact, not based on price at all. When looking for an attorney did you review several attorneys, ask each one, "How much for a will?", and then hired the one with the lowest price? Doubtful. Same with the remodeler who provides you with a new kitchen, or a new pool. Your concern is quality, delivery, and then price can't be too high. So price is often the least important factor. Often if someone puts in a low estimate, people often think that the quality of work must be poor if the price is so low. So what to do?

Start at the beginning. Mimic society's way of doing business.

Here's the deal:

1) Find three to five qualified and available vendors.
2) Check references, check quality of work, check backgrounds.
3) Communicate with them, and get a comfort level with each. What the service provider provides should match what you want. A balance of speed of delivery, quality, and price should match the buyers desires.
4) Negotiate, and come up with an agreement.
5) Transfer money, start the project work.
6) When the project work is completed, people usually report to others how happy they were with the vendor.

That's pretty much it. Whether you want a new shower for your house, or your business needs 4 new global web sites, the process of doing the deal is pretty much the same.

Let's start with number 1:
1) Find 3 (three) to 5(five) qualified and available vendors.
Want to find someone to remodel your kitchen? This usually takes 1 to 3 weeks before a deal closes. First you have to call, network, and find some companies that are available to do the work. So availability is key. Someone real busy will give you high prices, someone without any work, will give you low prices. And qualified is also very important. Does the company specialize in $5000 to $10,000 jobs? Or $30,000 to $40,000 jobs? Or more? And how will they work? Will the crew come every day until it's complete? Or will they come and just leave their tools for a week, and then come 2 days a week until the job is completed? There are a whole lot of variables. When you want to buy a product, like a book, you don't have to go through all this.

I set out our goal to be able to close a service deal for project work, in under 10 minutes. This seems to be a reasonable, yet very difficult goal. The Internet, with all its power, and communicative ability should be able to find 3 to 5 qualified service vendors instantly for any buyer. So imagine for a minute.... You go to your computer, log onto the Internet, and in 60 seconds you have requested what kind of project work you need, and the computer has three faces available on the screen waiting to talk to you, show you their work, so you can close a deal in 10 minutes. That's the idea. You communicate with each, check them out, do everything that normally takes 1-3 weeks, do it all in 10 minutes, and close the deal online. Everyone knows this will happen. We think we have the most natural way, and the way everyone will evolute to in conducting these kinds of transactions.
So how does it work? Suppose there are 100 qualified kitchen remodelers in your area. The LOE will communicate with these remodelers on a weekly or daily basis to determine their availability. And their availability is also naturally determined by their LeadOptions (we'll get to that in a minute). Now suppose out of the 100, there are 40 that could use some work - 40 are available. Suppose the other 60 are too busy to quote any more jobs. Should the computer system send all 40 to you? Absolutely not. Remember, for this to work, you have to mimic the real world. And no one would ever want to communicate with 40 different kitchen remodelers. And everything must be in balance. Suppose you were one of the kitchen remodelers? Would you even bother to spend your time to give a quote on a small job where the buyer was going to get 40 quotes? Probably not. So just sending over all qualified and available vendors will not work. So which ones do you send over? Well you can group the 40 on a First Come, First Serve basis, and just give the next 3 kitchen remodelers the lead.
But there First Come, First Serve Basis doesn't solve all problems:

- How many leads per company?
  Suppose one company has 90 employees and can handle closing 10 kitchens in a week? And suppose Joe Doe up the street does kitchens by himself and can handle 1 per week? How many leads should each company get?

As you can see, right away, this process cannot be simple. It's a complex problem. What other problems are there with a first come first serve?

- First Come, First Serve doesn't track who is available.
- First Come, First Serve doesn't allow buyers to express how much they need service, or how desperate some providers are to find work.

Now what if we create something called a LeadIt™? Gave out limited quantities of these LeadIts to users? And then allowed each user to express their desires through these valuable LeadIts? This is basically a lot like paying for leads. The process is to allow users to express their desires by paying for leads.
Paying for the lead:

- ♦ Helps service providers express how much they really want the lead, and hence shows their availability and desire for this particular job. So it allows service providers to express how good a match this is for them, and how much they want the work.
- ♦ Allows the web site marketplace to make a small transaction fee for creating this wiz bang cool system, and keep it going, and pay for brokers to help conduct transactions.
- ♦ Help force correct availability information to be transferred to the buyer.
- ♦ Create a fair and competitive marketplace where any qualified vendor can get work.

The world is a competitive society, and building a fair, and competitive marketplace is what the world needs in a marketplace that will work in the long term.

It is not about "selling leads". There are Internet comapanies that sell leads on the net. They are a source for leads. And they resell their leads to as many people as there are willing to pay for them. This is not the case with the Lead Option Engine. The Lead Option only gives this Lead out to three people (or more as the parameter is market set by size of job), and hence creates a great deal of "Lead Value". Further this lead is qualified. They want to do business with a company just like yours, now, **right now**. No traditional "Lead Bank" offers this kind of service. None. "Selling Leads" traditionally means using a shot gun approach. Get some people who may be interested, and hit them with direct mail and phone calls. That is not what this is about. This is about closing deals in 10 minutes.

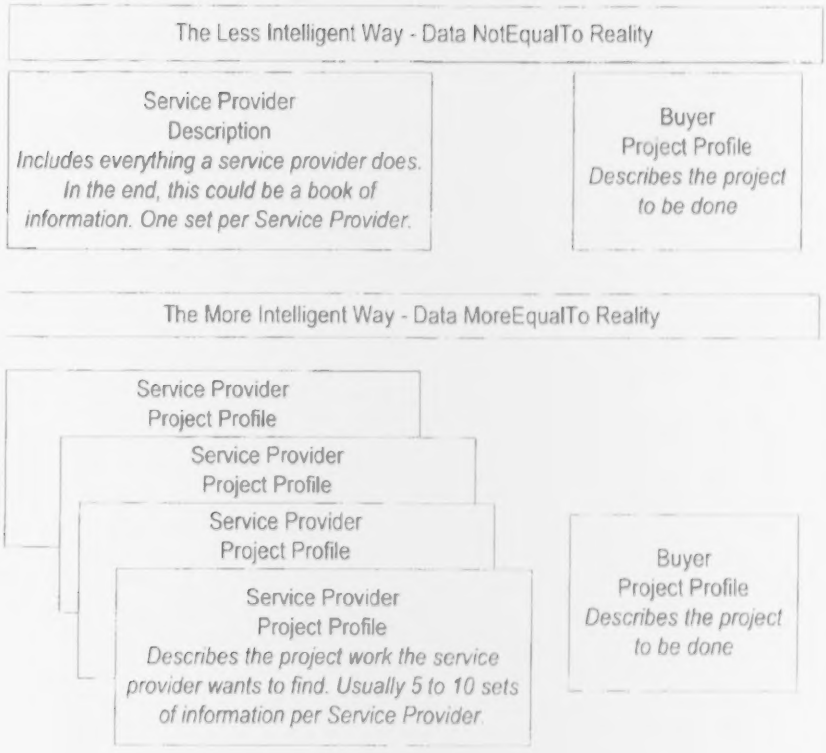
I also think that the ways humans will evolve in working with the Internet will follow a natural path that will not be determined by just someone's new business model. Humans will test and try different methods, and only the natural, most sensible methods will work. I think this path is the LeadOptionEngine. I don't think there is another way. If there is, I am the first who wants to know how it will work. To fulfill the requirements of closing a deal in 10 minutes and creating a fair and competitive marketplace, the Lead Option, or variation of it, is the most balanced way. And the great thing about it, is it keeps everyone happy. The buyer is

happy, the service provider is happy, and the transaction service vendor is happy (we'll get to them later).

Before we get to the LeadOption, we have to qualify the service provider or buyer. And don't forget. The market works both ways. All kitchen remodelers may be booked for work for weeks, and the buyer could be the one who pays for the next look at a qualified and available kitchen remodeler.

So how do we qualify? Easy - just give the customer what they want. Don't give them more, or less, just exactly what they want. There are two pieces to the matching puzzle. The first piece is the project itself. How big the project work is, what kind, when you need it, and it goes on and on. The second piece is the Organizational Profile. Each organization has a personality. The size of the organization in employees, part-timers, and contractors is good to know. How long has the organization been in business? What kind of work do they do? Is it quick and on time? Do they focus on being inexpensive? Do they focus on quality? There are no bad vendors or buyers, just bad matches. That is a very important concept to grasp. A terrible kitchen contractor who is dishonest, and does poor quality work, but is real inexpensive, may be just the perfect fit for a buyer who is terrible to work for, dishonest, and always pays late. They deserve each other. So if you do get into this business, be aware that everyone has a right to live and work, and that there are matches for everyone. In the marketplace you create you many not want any "low quality" service providers. If, so be sure you don't have any "low quality" buyers either. Keeping happy services providers, the buyers' vendors, is as important as keeping happy buyers. The service providers will be the group that makes a living off your marketplace.

The way the LeadOptionEngine works now, is everything is matched through a "ProjectProfile". A buyer describes the project work they are looking for, and the service provider also describes the project work they are looking for. Such an approach leads to intelligent and more exact matching than only doing an organizational profile, like most other engines on the Internet. Let me explain. I will start with a picture:



Most other engines would ask the service provider one set of questions. That is a problem. Suppose I am looking for software work (we always are at www.site7.com) and I really want to get project work that involved Oracle and ebusiness engines. If I were to use the "Less Intelligent Way", the web site marketplace would display several pages of questions about my company, essentially my company's resume. In the company resume I would describe everything I have ever done, or my company, so I would be included in all kinds of searches, and supposedly increase my chances of getting work. That would include about 20 areas unrelated to what I was really looking for right now. If my company was very small, I might even include everything I am qualified to do. I could include water ski instruction, and awning installation (I worked in awnings for 18 months). Suppose I wanted to get projectwork for one week in the summer involving water skiing? This attempt of trying to match one project to my entire resume does not reflect reality. What reality says is I want a particular project, with particular parameters, and I want this project this month. Next month we may be looking for something else. And not only that, but that this month, we may be looking for 3 or 4 different projects. So in using the resume-to-project method the computer is trying to match oranges to apples. It's trying to match a organizational resume to a project. It doesn't work well. Why? Well you will never

have a good match percentage. Since our organizational resume is very large, any project we do will only have a 10% to 20% using this method. This brings us to the "More Intelligent Way". Here we match desired project work with buyer's project work. Here you will normally have 70%-100% matches. The service provider tells the marketplace what kind of project work they want, and the buyer describes the project work they need to be completed. Using this method, the computer can quickly and accurately match up service providers project work desires with the project work described by the buyers. It works very well.

Hopefully I have effectively communicated to you how our ProjectProfile system works. If you would like to see an Information Technology example, go to www.projectwork.com. Go to the practice section and enter in some project profiles. But you will need to bring your imagination with you. This same approach can be used with construction, aviation maintenance, personal care, anything that's a service.

Included in our matching engine we have added two very important items, the "Mandatory", and the "Inclusive" buttons. The mandatory button can be used on any keyword. For example, if you only want matches where the word "kitchen" is used, you only get those matches. Even if a match has a 90% match, if "kitchen" is not included, the match won't happen. This adds tremendous value to the Lead. If a customer goes to a marketplace, communicates what they want, and then does not get it, guess what happens? You just lost another customer, and the world has gained another believer in the idea that the Internet will never work. Inclusive is more of the shotgun approach. For example, you may want anyone who uses the keyword "Assembler", regardless of match percentage. This is helpful if only a few organizations possess a rare skill. Today, there are fewer organizations that want to do "Assembler" programming work, and a company looking for that kind of work would probably like to find any organization that is willing to do assembler, even if their focus was something else.

So now in our design, we have

- Descriptions of wanted project work by service providers
- Organization personality of the service providers
- Descriptions of wanted project work by buyers
- Organization personality of the buyers

And we may have:

- Buyer's preferred service provider organization personality
- Service provider's preferred buyer organization personality

We also have who is available, partially through constant communication, and partially through reputations, and partially through the LeadOption. That's a whole lot of information where we can really make deals happen quickly.

Let's explore availability. I can contact you and find out if you are available. That's one way. And we do use this method. Another is through the reputations route. If a service provider has been using a marketplace several times, we can track if the service provider is really available every time we present a lead to them. So a buyer can request only those service providers who have a certain score in the area of "Claimed Availability". This helps separate those service providers who always claim "We have resources to handle another job" when in fact it is not true. And the same kind of reputation follows the buyer. Is the buyer the real deal? The third way to track availability is the LeadOption. The five key LeadOption fields are described below.

	Example
Number of Leads You Want	5
Maximum LeadOption Amount	$25.00 (can be $0)
Start Getting Leads Date	5/1
Expire LeadOption Date	5/8
ProjectProfile ID	4534

This LeadOption is tied to a ProjectProfile that was already created. This is saying that this person is willing to pay a maximum price of $25 per lead that matches their criteria. And further this person wants 5 leads. That means the most this person will pay is $125 for 5 leads. Expensive you may think? If the person closes a $20,000 deal in 10 minutes, $125 is real, real, real inexpensive. That's obvious. The price of $25 is a LeadOption amount that the user has chosen. Kinda like stock options. Prices paid are market prices. If $25 is enough to get a lead, only market price is paid as determined by competition. So if all others are willing to pay $10, this LeadOption would only pay $11 for that lead. And when the marketplace first opens, most users will enter in $0 for the LeadOption. But as the value of the leads increase, and the users understand this value, users will be willing to pay for leads. When supply=demand, most Max LeadOption Amounts will be low. When supply<>demand, Max LeadOption Amounts will be high.

The start date is controlled by the user, but the expire date is controlled by the user and also by the marketplace. The administrator of this system may decide that all LeadOptions will expire in 7 days, and that all users must reinsert another LeadOption every week. This helps the availability question a great deal. If an organization obtained project work the past week, they would not reinsert the LeadOption for the next week to get more leads that they would have to pay for. So natural incentives are helping the marketplace. Expire dates can be limited to any amount of time from one minute to one year. The max expire date will be different per industry. Pet walking sites might use a 7 day expiration, and a software marketplace might implement a 4 week max expiration date.

The LeadOptionEngine has three powerful built in incentives for ensuring service providers are available: the LeadOption, direct contact, and reputations. Gee, isn't this better than doing some search on some web site and getting over 700 possible business partners? Some of who are not good matches, nor who are available? That's what happens to me virtually every time I go to the Internet and try to close a deal. With the LeadOptionEngine you get a few qualified and available service providers, and the entire transaction is monitored and managed to ensure everyone gets what they need. All in ten minutes or less.

Again, if you are thinking about this whole LeadOption thing is selling leads, it is and it isn't. It isn't like selling leads the old way. It is selling a lead who has a good percentage of closing in 10 minutes. That's a lot different than buying a thousand leads, and then mailing and calling them for weeks to find out who wants what you offer.

The LeadOption works both ways. Both buyers and service providers must fill out the LeadOption. Buyers have an option to pay for the next service provider that comes available as well.

Another feature that we have implemented in some service marketplaces is the "web ring". If someone wants to do business only with a specific and defined group of organizations, our system does support web rings. For example take the problem of creating a pet walking site in Manhattan. You don't want criminals to steal your pet or your wallet. So certain groups of people may form a web ring. And the web ring will include pet walkers, and clients who are only admitted to the group by invitation only. The LeadOption still works as described, but limited to the web ring, or gives a web ring or group of web rings priority. We actually have almost completed www.petwalking.com, but it's not available yet, though the system is for sale.

The rest is pretty basic actually. Now that contact has been made, the buyer and service providers get together to close the deal. Let's look at number 2.

2) Communicate with the vendor
This part will really explode when video conferencing is widespread. This isn't required for the system to work in all markets, but in some markets it is required. How great would it be to be able to talk to 3 qualified and available vendors in 10 minutes! You could be an impulse buyer even when it comes to pools! Or having a party! Get a band, caterer, cleaning crew, and pet sitting, all in 10 minutes. Other communications include chat rooms, Internet phone calls, and of course, video conferencing. But for the system to work well, we think when the time comes that video conferencing is as easy as making a phone call, that Internet service transactions will increase dramatically. Now we move to number 3.

3) If you like what you communicate with, it's probably time to check references, past work, and the like. So online you could view the kitchen some company

completed last week, and ask last week's customer how happy they were. And you could check the objective reputation tracking system that is included in the LeadOptionEngine. Objective means numbers only (not that "I hated this person" kind of reputation). We will touch on reputations later, but we strongly believe all reputation data should be reported in numbers. We don't allow any statements. This is the professional way to handle business. There is no need that is filled with derogatory remarks. Anyway, we will get to the reputation logic later. Here you can check backgrounds, credit, references, all kinds of research per service provider and buyer. Buyers will need to be qualified by service providers as well.

4) Negotiate and create agreement.
Here we suggest that the marketplace have some industry acceptable agreements available for download. Digitally signed agreements can then be stored for long periods of time by the marketplace. Our system has a secure document storage section, where users must be given permission to view or download a document. So if you create a document you have control over who has permission to see it.

5) Now you have a deal. Often to close, you have to transfer a deposit amount to the service provider. This can obviously be done over the Internet. Money is transferred electronically during the 10 minute deal.

6) After the project work is completed, the service provider and buyer both must fill out the questionnaire, and the reputations of both parties are amended to include the latest job.

7) Other options include features like escrow, broker, scheduled payments, and project management services. An escrow agent can be assigned to the deal. A broker will often make deals for buyers and service providers. Project Management software may be available to allow buyers and service providers to track and manage the deal.

And that's the process. The scenario above does not include market-to-market overflow resolution or broker only markets, but we will get to that later.

A word on reputations. We don't think there is any reason to store verbal stories about anyone on any system. We are strong advocates of OBJECTIVE reputation tracking. That means numbers only. No statements whatsoever. It works real well. You ask questions, and each answer is a score. Scores can be from 1 to 3, or 1 to 10, whatever makes sense for each question. And questions are weighted to come up with an overall average. We also keep statistics on the person answering the questions. If a grumpy person is always complaining and giving low scores, our system will track this person's habits of answering questions. That way a grumpy person won't be able to adversely affect the reputations of many people.

And what about this Internet City thing?

These are some of the dot coms we would like to see:

- VideoConference.com
- Reputation.com
- MoneyTransfer.com
- BusinessAgreements.com
- DocumentStorage.com

Just to name a few. But since some of these web sites don't exist to provide the services we need, we have to implement their functionality into our web site. It may make sense that some new web sites will open up who specialize in reputations. Tracking everything. And further, these reputation web sites may specialize in a certain sectors. The reputation web site of the future is much different than a credit bureau, or Dun's. I imagine these reputation sites will be backed by large corporate names that are well respected in industry, and they will keep track of people's work related behavior across the country throughout their lives. But since these kinds of services are only available in the future, we built our system to be not only the marketplace, but also the reputation tracker, the agreement system, the document storage system, etc.

Much like today's phone companies are having increased competition, (I just read that there 90 phone companies competing for BellSouth's local business here in Atlanta), our transaction service vendors who provide things like video conferencing to our customers, will have to compete for getting the business of our customers. Since it's tough enough to manage and run an Internet based services marketplace, it's easier and better to outsource a lot of these transaction services to specialized companies. In our vocabulary, a transaction service is any service that is provided in the web marketplace that helps facilitate a deal in closing or completing. In setting up a marketplace it's best to work with companies who specialize in each transaction service. But if these companies don't exist yet, we have to provide these services. Again, these services are necessary to create a well functioning marketplace. The customer doesn't care what your focus is, or ours, they just need a working system. So in the interim, if a service can not be provided by another company, we have to provide that service, or you do.

Another example is escrow services. There may be professionals who make a living by escrowing small construction deals between home owners and construction service providers. So if you go online to get a pool completed, both service provider and buyer agree that any disputes are resolved by the escrow company. I don't particularly want to be in the escrow business, but if I am going to build a marketplace for my customers, and the marketplace demands escrow services, and I have no other route, I must create this service. So in building your Internet City, you may have to run more than one dot com. But most likely you will be able to partner up with a few dot coms that do provide some of the needed transaction services for your customers.

Section 2: Customers, brokers, and the industry clearing house.

This section discusses brokers, clearing houses, and the more structured and mature marketplaces.

In many of today's marketplaces professional brokers are needed or are already existing. Let's look at the information technology marketplace. There are many small businesses who need or want a new web site. And many of these business people have very little background in technology, and don't understand how to purchase technology. Often these small businesses contract with a firm or individual, have a bad experience, don't get what they need, and they try again. Often on the 3rd or 4th effort, they finally get what they want. Often this is after a lot of time and money is spent. What this small business needed was a reputable and professional Information Technology broker. Lots of these brokers are being created everyday. In many industries a broker who understands the specific industry a customer is involved in, is needed desperately to close a deal quickly, and have the work done correctly. And this kind of economic model already exists in lots of industries today. In conceptual terms, this is how the model works:

Suppose a customer wants to purchase something in an industry in which they are not qualified to do business. The customer contacts 2 or 3 brokers, and picks one to represent them. The broker goes to the "members only" marketplace, and puts a deal together. So an Internet system has to do the following:

1) Qualify customers vs. brokers
2) Introduce customers to brokers
3) Create a broker, or professional "members only" marketplace. Unless you are in the business, you are not allowed in. Like an auto auction. Usually only car dealers are allowed in auto auctions.
4) Create a clearing house market for overflow and for buyers who have not found local sellers, and sellers who have no local buyers. (Local means in the current marketplace, which may be across the globe)

You may have to create two sections of your marketplace, one for customers, and the other for professional buyers and sellers. Our LeadOptionEngine design supports this scenario.

The clearing house is difficult to execute on the net today. With so many little separated markets on the Internet, and with everyone competing, the Internet is very splintered today. It is impossible to search in one marketplace, and know that all other marketplaces are being searched as well. We will go back to the kitchen remodeling scenario. Suppose there are 10 construction or kitchen remodeling sites available for you to search and close a deal. Suppose you enter one of these sites, and find that no kitchen remodelers are currently available on that site. As a next step would you prefer that the one site you entered check the

other sites for you? Or would you prefer to reenter all that information 9 other times in each site? Obviously you would want the one web site you are working with to automatically search all relevant sites. This is where the clearing house comes in. Normally competitors don't like talking with each other directly. So a clearing house will communicate among members in an industry. If a clearing house market is set up, all commissions are already handled and decided, and all business rules are already set up. With a clearing house a marketplace can deliver its extra supply and demand needs to the clearing house, and other similar marketplaces will try and fill those needs. And the clearing house works both ways. It will find buyers for service providers, and find service providers for buyers. When this is built it will be a wonderful and mature economic system that all users want. Go to one place, and be global. Wow! The LeadOptionEngine supports this kind of clearing house, and broker model. Not all industries need this kind of economic model, but some are desperate for it.

Section 3: Accounting- When to book revenue

Following is a suggested description of how to run your marketplace when it comes to accounting and booking revenue.

Suppose you start your marketplace, and a lot of service providers sign up. And suppose they deposit money in hopes of getting qualified buyers on your web marketplace. Suppose together they deposit $10,000 in a given month. Now suppose that no buyers have been attracted yet. Here is where the web marketplace, the buyer and the seller can all work together using Adam Smith's invisible hand.

Suppose your accounting organization has decided to not book revenue until a lead_execute is generated. This says that if you, a user, deposits $100 into the system, and you have not received any leads yet, the web marketplace doesn't yet credit itself with a doing a fine job. As long as the user doesn't get a lead, the web marketplace has done nothing. But as soon as a lead is generated, then the web marketplace books in the revenue.

What the web marketplace can do is spend a certain percentage of deposits toward those buyers' and service providers' market needs to create leads. This will create a working system. Taking our first example, suppose your marketplace has just received $10,000 in deposits from service providers, and no lead executes have been realized. It is a good idea if the web marketplace spend maybe $5000 of the $10,000 on extremely targeted advertising. Since the marketplace knows exactly what kind of buyers its service providers want, your web marketplace business can respond effectively to the desires of your users. This is a great way to ensure long term success. Your users deposit money, the web marketplace responds by driving the right buyers and sellers to the marketplace to make transactions occur. The web marketplace is now focused on creating transactions, and not just getting deposit money. This is crucial to long term success. If a web marketplace business' focus is on getting deposits,

its model will not work well. If a web marketplace business' focus is on creating lead executes, then the business will prosper in the long term. Not booking the revenue until either a lead execute occurs, or until a certain percentage is paid to drive the right buyers and sellers to the marketplace is key in establishing correct long term incentives for the business.

I hope you have enjoyed reading this document, and I hope it helps you in your quest to conduct service related transactions over the Internet in under 10 minutes. You may want to review our database architecture at www.site7.com/loe/dbarch . You may email me at roger_loebc@site7.com.

www.site7.com is available to scope, design, or build your entire web services marketplace. And you can even arrange to use our Application Service Provider (ASP) solution at ProjectWork.com. We can help you:

1. Present and train management and technical personnel on the LOE system
2. Prepare next steps to integrate the LOE into your web marketplace
3. Design your interface and competitive advantage properties
4. Integrate all functions you need
5. Implement, configure and manage your marketplace.

Thanks for your time,
Roger Desenberg
Chief Software Architect
LeadOptionEngine Author
Site 7 Corporation

EXHIBIT "Q" PATENT 7,139,732 TEXT FROM USPTO.gov

The documents in Exhibit "Q" is the text that is available online at the USPTO.gov web site showing US Patent 7,139,732.

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United States Patent **7,139,732**
Desenberg **November 21, 2006**

Systems, methods, and computer program products facilitating real-time transactions through the purchase of lead options

Abstract

Systems, methods and computer program products facilitating real-time service transactions between two or more users, including at least one client and at least one service provider. Service providers complete project profiles identifying projects they wish to work on, and clients complete project profiles identifying projects they would like to pay service providers to complete. The project profiles including identifying parameters such as the type of service or project, start date, completion date, skills required for completion, and the like. Both the clients and service providers may then purchase lead options to identify their desire for obtaining a matching user. The lead options can be a sum of money a user wishes to pay for a lead. The systems, methods and computer products then determine matching clients and service providers based upon the project profiles, and identifies to one or more lead option submitting users the immediately available users that match the project profile submitted by the user. In this manner, clients and service providers can utilize the present invention to locate immediately appropriate and available users with which to transact with.

Inventors: **Desenberg; Roger Marx** (Marietta, GA)
Appl. No.: **09/621,663**
Filed: **July 24, 2000**

Related U.S. Patent Documents

Application Number	Filing Date	Patent Number	Issue Date
60144984	Jul., 1999		

Current U.S. Class: **705/37** ; 705/35
Current International Class: G06Q 40/00 (20060101)
Field of Search: 705/7,412,35,37

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Primary Examiner: Bashore; Alain L.

Parent Case Text

CROSS-REFERENCE TO RELATED APPLICATIONS

The present application claims benefit from U.S. Provisional Application Ser. No. 60/144,984, filed Jul. 22, 1999, inventor Roger Desenberg, which is incorporated herein by reference.

Claims

That which is claimed:

1. A method for a user using a communication network to search for and identify at least one matching provider of project work, the method comprising; transmission of a lead comprising contact information that enables communication between the user and the provider, wherein the transaction lead price is the amount of money paid for the lead, and further wherein a service is performed by the user or the provider as a result of the tranmission of the lead and wherein the performance of the service includes a service transaction fee paid by the user or the provider; storing in a database at least first provider information and second provider information, the at least first provider information and the at least second provider representing at least respective maximum lead prices, each of the respective maximum lead prices representing the maximum amount that each of at least a first provider and a second provider is willing to pay for an lead, wherein each of the at least first and second providers provide at least one service with which the lead is associated; comparing the respective maximum lead prices to determine a lowest respective maximum lead price; identifying the provider associated with the lowest one of the respective maximum lead prices; receiving at least one lead limit that represents a maximum quantity of leads to be provided; receiving from a user or provider a request for contact information, the contact information enabling communication between the user and at least one of the first provider and the second provider; selecting at least one provider based on each respective provider's maximum lead price and the lead limit; calculating a respective transaction lead price for each of the at least one selected provider, wherein the respective transaction lead price equals at most each respective selected provider's maximum lead price; and providing the at least one lead to the user or provider for project work.

2. The method of claim 1, wherein the lead comprises at least one of a hyperlink to a provider's Internet web site, a provider's e-mail address, a provider's name, a provider's code, or a provider's telephone number.

3. The method of claim 1, wherein the lead comprises at least one of a hyperlink to the user's Internet web site, the user's e-mail address, the user's name, the user's code, or the user's telephone number.

4. The method of claim 1, wherein the lead comprises information enabling communication between a provider and the user.

5. The method of claim 1, wherein the at least first provider information and second provider information further represent a respective last lead date, and wherein the step of selecting is further based on each respective last lead date.

6. The method of claim 1, wherein the at least first provider information and second provider information further represent a respective description of a feature of the at least one service provided by the at least first provider and the second provider.

7. The method of claim 6, wherein the request further comprises a respective description of at least one feature of a service sought by the user.

8. The method of claim 7, further comprising: comparing the respective description in the request with the description in the at least first provider information and second provider information; and defining a set of providers based on the step of comparing the description in the request with the description in the at least first provider information and second provider information.

9. The method of claim 7, further comprising matching at least one of the at least first provider information and second provider information with the respective description in the request based on the degree in which each feature described in the at least first provider information and second provider information correspond to the described feature in the request.

10. The method of claim 9, further comprising providing a number of leads based on at least one of the step of matching and the lead limit.

11. The method of claim 10, further adjusting the quantity of the at least one lead based upon a comparison of the step of matching and the respective maximum lead price.

12. The method of claim 1, further comprising charging at least one of the first provider and the second provider an amount corresponding to the at least one of the first provider's and the second provider's respective transaction lead price.

13. The method of claim 12, wherein the step of selecting is further based on a respective amount of credit each of at least the first provider and the second provider have.

14. The method of claim 1, wherein the step of selecting is further based on at least one of the date and time the at least first provider information and second provider information is received, in case at least two of the at least first

provider and second provider have the same respective maximum lead price.

15. The method of claim 1, wherein at least one of the first provider information and the second provider information is received in the form of a respective provider profile.

16. The method of claim 1, wherein the request received from the user is formatted as an user profile.

17. The method of claim 1, wherein at least one of the at least first provider and second provider is an organization.

18. The method of claim 1, further comprising: providing a respective transaction lead price increment value for calculating a respective transaction lead price for at least one of the first provider and the second provider; ranking at least one provider based on each respective provider's maximum lead price, wherein the step of calculating a respective transaction lead price for each of the providers further comprises using at least one of the lowest maximum lead price, the lead increment value, the ranking of the at least one provider, and the respective transaction lead price of the provider in the next lowest ranking.

Description

FIELD OF THE INVENTION

The present invention relates generally to electronic transactions, and more specifically, to systems, methods, and computer program products for the facilitating real time project work transactions between service providers and clients.

BACKGROUND OF THE INVENTION

With the advent of the Internet, electronic commerce has become one of the fastest growing segments of the economy, due to the fact that the Internet is an easily accessible platform allowing individuals to transact with each other regardless of geographical boundaries or pre-existing relationships. As a result, this forum has lead to unparalleled opportunities for businesses and consumers. Currently, thousands of businesses and individuals offer virtually every type of product and service for purchase online, facilitating the exchange of over a billion dollars in goods each year. Moreover, as the

Internet becomes more prolific in society, the number of transactions are expected to increase dramatically.

However, despite the Internet's success in facilitating commerce, hurdles still exist that prevent many businesses and consumers from successfully utilizing the Internet to facilitate business. One significant area this is readily apparent is in the sale and purchase of services, such as project work. For instance, due to the remote nature of Internet business transactions, services are difficult to market, especially as compared to goods, which are often uniform and can be more easily represented with present day technology. For instance, a consumer concerned about the quality of goods can purchase a well known brand name to reassure themselves that they are going to receive consistent quality even while purchasing site unseen, possibly from a vendor the consumer hasn't previously transacted with. Furthermore, consumers can often view goods online. On the contrary, services are difficult to market over the Internet using conventional websites because these services are not consistent, inventoried items, or items that are ready for exchange in a matter of a few days. Often, services take considerable amount of time to complete and require special skills. Furthermore, depending upon the work to be completed, a service must often be tailored to a customer, and the customer must know the service provider has the skill set to complete the service to the consumer's satisfaction. Conventional models based on the buying and selling goods do not offer a structured process to allow the buyer or seller to ensure all proper questions are asked and documented that will allow for a good transaction.

Currently, a significant amount of project work is marketed via advertising, including print ads, door to door advertising, mass mailings, and commercial advertising. Additionally, most project work is not facilitated by an electronic marketplace. Consumers who seek service providers to perform such work must often contact one company at a time, by telephone, mail, fax, or e-mail, in an attempt to determine what providers have the necessary skills, experience and capacity to complete a project. This process is often time consuming, as each company must obtain project specifications, and then make a bid for the project. Sometimes consumers are not offered any defined expectations as to when a bid will be completed, or as to the kind of bid expected. Moreover, there remains a great dependency on word of mouth contacts via friends and associates, which limits the buyers' and service providers' options and marketplace size. Finally, it is often very difficult to assess a service provider's or buyer's quality and reputation.

Furthermore, both customers and service providers typically incur significant expenses in locating each other. For service providers, these expenses are often in the form of advertising, and in the time and effort spent to convince consumers to purchase their services. Likewise, consumers incur expenses in

the spending time to locate a suitable service provider. Additionally, where a need is immediate, clients can incur significant irreparable harm where they cannot locate a suitable service provider quickly.

Therefore, it will be appreciated that current Internet marketplace solutions are not readily scalable to facilitate a marketplace in which consumers and service providers can locate each other, and conventional methods of locating service providers and consumers is inefficient and often results in poorly informed choices. Therefore, what is needed are methods, systems and computer program products that enable consumers and service providers to locate each other in an efficient manner, with minimal delay, and with minimal cost. It would also be advantageous for these methods, systems and computer program products to facilitate project work transactions between clients and service providers. Furthermore, it would also be advantageous to allow service providers or customers to purchase lead options to express their desire to receive a match, which would otherwise take great time and expense.

SUMMARY OF THE INVENTION

The systems, methods and computer program products according to the present invention facilitate real-time service transactions between two or more users, including at least one client and at least one service provider. Service providers complete project profiles identifying projects they wish to work on, and clients complete project profiles identifying projects they would like to pay service providers to complete. The project profiles including identifying parameters such as the type of service or project, start date, completion date, skills required for completion, and the like. Both the clients and service providers may then purchase lead options to identify their desire for obtaining a matching user. The lead options can be a sum of money a user wishes to pay for a lead. The present invention then determines matching clients and service providers based upon the project profiles, and identifies to one or more lead option submitting users the immediately available users that match the project profile submitted by the user. In this manner, clients and service providers can utilize the present invention to locate immediately appropriate and available users with which to transact with.

According to one embodiment of the invention, there is disclosed a method for facilitating a real-time transaction between two or more users, wherein the two or more users comprise at least one client and at least one service provider. The method includes registering a first user profile, wherein registering the first user profile identifies a first user, and receiving first project profile information from the first user, wherein the first project profile information includes at least one attribute associated with a first project. The method also includes registering a second user profile, wherein registering the

second user profile identifies a second user, and receiving second project profile information from the second user, wherein the second project profile information includes at least one attribute associated with a second project. The method further includes determining if the second user is available to transact with the first user, and, where the second user is available to transact with the first user, matching the first user and the second user based at least in part upon the first project profile information and the second project profile information. Finally, the method includes identifying the second user to the first user, where the first user provides, through the submission of lead option information, a preference for obtaining one or more matches.

According to one aspect of the invention, determining if the second user is available to transact with the first user includes determining if the second user is available to transact with the first user based upon the second project profile information. According to another aspect of the invention, the method further includes contacting the second user to determine if the user is immediately available to transact with the first user. Furthermore, the first user profile can include identification information, and the at least one attribute may be selected from one of the group consisting of a start date, an end date, and a maximum price. Additionally, the lead option information can include a sum of money, and can be received from the second user.

According to another embodiment of the invention, there is disclosed a system for matching users registered with a lead option engine, to facilitate a real-time transaction. The system includes a computer, a web browser resident upon the computer, wherein the web browser permits the user to access a network, and a lead option engine. The lead option engine is located on the network and accessible via the web browser, wherein the lead option engine matches users based upon project profile information, and offers at least one user the identity of at least one other matching user based at least in part upon lead option information, wherein the lead option information identifies the preference of the at least one user for identifying a matching user.

According to one aspect of the invention, the lead option engine offers at least one user the identity of at least one other matching user where the lead option engine has determined the at least one other matching user to be available for a transaction. Furthermore, the lead option information can include a maximum lead option value that is used by the lead option engine to determine the at least one user receiving the identity of the at least one other user. According to another aspect of the invention, the lead option engine is accessible by the web browser via the Internet, and can include a sum of money to be paid by a user for identifying a matching user. The project profile information can also include a plurality of attributes, received from each user, identifying a project to be completed, and the lead option engine can match

users based upon similarities between the plurality of attributes received from each user.

According to yet another embodiment of the invention, there is disclosed an engine that facilitates transactions between users through the acceptance of lead options, wherein the users include clients and service providers. The engine includes a network interface enabling the engine to receive project profile information and lead options from a plurality of clients and from a plurality of service providers, a storage device that stores the project profile and lead options received from each client and each service provider, and a lead option application. The lead option application compares the project profile information received from each client to the project profile information received from each service provider, generates matching clients and service providers based upon the comparison of project profile information, and informs at least one user of a match based upon the lead options received from at least one of the clients or service providers.

According to one aspect of the invention, the project profile information includes an attribute selected from one of the group of attributes consisting of a project start date, a project end date, and a project maximum price. Additionally, the lead options can include a sum of money. Furthermore, the lead option application can rank the matching clients and service providers based upon the similarity of the project profile information received from each.

According to another embodiment of the invention, there is disclosed a computer program product for facilitating a real-time transaction between two or more users, wherein the two or more users comprise at least one client and at least one service provider, and wherein the computer program product comprises a computer readable storage medium having computer readable program code means embodied in said medium. The computer readable program code means includes computer instruction means for registering a first user profile, wherein registering the first user profile identifies a first user, receiving first project profile information from the first user, wherein the first project profile information includes at least one attribute associated with a first project, and registering a second user profile, wherein registering the second user profile identifies a second user. Additionally, the computer readable program code means includes computer instruction means for receiving second project profile information from the second user, wherein the second project profile information includes at least one attribute associated with a second project, and facilitating a transaction between the first user and the second user based at least in part upon the first project profile information, the second project profile information, and lead option information. The lead option information is received from the first user, and identifies a preference

of the first user for identifying another user to transact with.

According to one aspect of the invention, determining if the second user is available to transact with the first user includes determining if the second user is available to transact with the first user based upon the second project profile information. According to another aspect of the invention, the method further includes contacting the second user to determine if the user is immediately available to transact with the first user. Furthermore, the first user profile can include identification information, and the at least one attribute may be selected from one of the group consisting of a start date, an end date, and a maximum price. Additionally, the lead option information can include a sum of money, and can be received from the second user.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 shows a block diagram of a system of the present invention, according to one aspect of the present invention.

FIG. 2 shows a block diagram of a Lead Option Engine, according to one aspect of the present invention.

FIG. 3 shows a block diagram process flow implemented by a system of the present invention, according to one aspect of the invention.

DETAILED DESCRIPTION OF THE INVENTION

The present invention now will be described more fully hereinafter with reference to the accompanying drawings, in which preferred embodiments of the invention are shown. This invention may, however, be embodied in many different forms and should not be construed as limited to the embodiments set forth herein; rather, these embodiments are provided so that this disclosure will be thorough and complete, and will fully convey the scope of the invention to those skilled in the art. Like numbers refer to like elements throughout.

As will be appreciated by one of ordinary skill in the art, the present invention may be embodied as a method, a data processing system, or a computer program product. Accordingly, the present invention may take the form of an entirely hardware embodiment, an entirely software embodiment or an embodiment combining software and hardware aspects. Furthermore, the present invention may take the form of a computer program product on a computer-readable storage medium having computer-readable program code means embodied in the storage medium. Any suitable computer readable storage medium may be utilized including hard disks, CD-ROMs, optical

storage devices, or magnetic storage devices.

The present invention is described below with reference to block diagrams and flowchart illustrations of methods, apparatus (i.e., systems) and computer program products according to an embodiment of the invention. It will be understood that each block of the block diagrams and flowchart illustrations, and combinations of blocks in the block diagrams and flowchart illustrations, respectively, can be implemented by computer program instructions. These computer program instructions may be loaded onto a general purpose computer, special purpose computer, or other programmable data processing apparatus to produce a machine, such that the instructions which execute on the computer or other programmable data processing apparatus create means for implementing the functions specified in the flowchart block or blocks. These computer program instructions may also be stored in a computer-readable memory that can direct a computer or other programmable data processing apparatus to function in a particular manner, such that the instructions stored in the computer-readable memory produce an article of manufacture including instruction means which implement the function specified in the flowchart block or blocks. The computer program instructions may also be loaded onto a computer or other programmable data processing apparatus to cause a series of operational steps to be performed on the computer or other programmable apparatus to produce a computer implemented process such that the instructions which execute on the computer or other programmable apparatus provide steps for implementing the functions specified in the flowchart block or blocks.

Accordingly, blocks of the block diagrams and flowchart illustrations support combinations of means for performing the specified functions, combinations of steps for performing the specified functions and program instruction means for performing the specified functions. It will also be understood that each block of the block diagrams and flowchart illustrations, and combinations of blocks in the block diagrams and flowchart illustrations, can be implemented by special purpose hardware-based computer systems which perform the specified functions or steps, or combinations of special purpose hardware and computer instructions.

The present invention comprises systems, methods and computer program products that provide leads to clients and service providers (collectively referred to herein as users) based upon project profile information, which identifies compatible users, and lead information, which is used by the system to prioritize matches. Leads are referred to herein as the immediate or real-time identification of a user wishing to transact with a particular user, where one user is a client, the other user is a service providers, and wherein both have similar requirements concerning a type of project, a timeframe for completing

the project, project specifications, user qualifications, and the like.

Thus, where a client desires a service provider to complete a project, the client can utilize the system of the present invention to locate such a provider. Likewise, where a service provider wishes to locate clients, the service provider can locate project work in their area of expertise. The lead information collected by the system of the present invention enables users to express their desirability for obtaining a match using lead options, which may be sums of money. Using lead options, the system of the present invention can prioritize matches such that matches are awarded to those offering the largest lead option, such as a sum of money, for a match.

This will be readily understood with reference to the following example, which is intended for illustrative purposes only, and is not implied to limit the type of transactions facilitated by the present invention. For instance, a carpenter having a specific skill set may utilize the system of the present invention to seek projects. In utilizing the system, the carpenter will be required to purchase lead options to express his desirability for obtaining a match. Because the invention, as will be described in detail below, can be implemented to provide a real-time marketplace for matching service providers and clients, it should be appreciated that there may be multiple other carpenters having similar skills and availability, who may simultaneously seek clients using the present invention. The system of the present invention can search for and locate clients seeking carpenters with specific skill availability and similar attributes identified by the clients. Where the system determines that one client matches multiple carpenters, based upon attributes input by the client and carpenters, the system will offer the match to the carpenter who has the highest value lead option. It will be appreciated that a similar illustrative scenario can occur where clients pay lead options for service providers. Thus, the invention disclosed herein provides for the efficient matching of clients and service providers to facilitate service transactions, where users can express their desire for a match using lead options.

FIG. 1 shows a system 105 of the present invention, including a Lead Option Engine (LOE) 100 accessible by one or more clients 110 and one or more service providers 120 having access to the LOE 100 via communication links 130. The communication links 130 between the LOE 100, clients 110, and service providers 120 are preferably implemented through one or more communications networks, such as a private extranet, a public Internet, or a third party extranet, though it will be recognized by those skilled in the art that other networks such as a public switch telephone network (PSTN) may likewise be utilized. In a preferred embodiment, the communication links 130 are implemented via the Internet using Internet protocol (IP). Further, the clients 110 and service provides 120 are preferably implemented by desktop

computers including a web browser application, optionally, with encryption capability. According to one aspect of the invention, the LOE 100 is accessible by the users through a web page located at an Internet destination, as is well known in the art. As will be described below, each client 110 and service provider 120 can optionally communicate with each other directly without the use of the LOE 100, as illustrated with dashed lines, once the LOE 100 provides the users with each others' contact information.

FIG. 2 shows an embodiment of the functional components of a LOE 200 in accordance with one aspect of the present invention. The LOE 200 includes a processor 210 that communicates with other elements within the LOE 200 via a system interface or bus 220. A display device/input device 230, for example, a keyboard or pointing device in combination with a monitor, is provided for receiving and outputting data to a user. It will be appreciated that a user can access and manipulate the LOE 200 directly via an input device 230 local to the LOE 200, or via an external network device, such as a computer in communication with the LOE 200 over a network connection. A memory 240 within the LOE 200 includes an Authentication Application 245 and a Lead Option Application (LOA) 250. The memory 250 further includes an operating system 260 that enables execution of the Authentication Application 245 and the LOA 250. A network interface 265 is provided for interfacing with other elements of an the system, as described in FIG. 1. Lastly, a storage device 270, such as a hard disk drive, contains files which are utilized by the Authentication Application 245 and LOA 250 to effect the methods described herein. In particular, the storage device 270 comprises a user profile database 280, a lead option profile database 285, a project profile database 290, a profile and specification query database 295, and a supplemental features database 299.

The function of each component within the illustrative LOE 200 will now be described in detail with reference to the flowchart of FIG. 3. However, it should be appreciated that each component within the LOE 200 may be combinable with any other components, including components within the LOE 200 or components located external to the LOE 200. Furthermore, some of the LOE 200 components discussed herein could be located entirely outside the LOE 200. Additionally, one or more of the functions performed by the components may be performed by a substitute component, or by an alternative component illustrated in FIG. 2. Therefore, the LOE 200 illustrated in FIG. 2 is not intended to represent the only possible structure of a LOE of the present invention, but one illustrative example of a LOE. Finally, it will be appreciated that the flow charts described below are illustrative embodiments of the invention, and are not intended to limit the scope of the invention described above.

FIG. 3 shows a general flow diagram illustrating the operation of a system of the present invention. Upon accessing the LOE 300, a registered user is first subjected to either an authentication or registration process 305, which is executed by the Authentication Application 245 in conjunction with the user profile database 280 and profile and specification query database 295. To Authenticate a user, the Authentication Application 245 can query the user for an ID and password. The ID and password are compared against IDs and passwords stored within the user profile database 280, using conventional techniques, to determine if the user has previously registered with the LOE 100. If a match is located, the LOE 100 identifies the user, and the user is authenticated and allowed to access the LOE 100 without further identification inputs. Alternatively, this could occur through the use of cookies stored on a user's computer, such that the authentication process is transparent to the user.

Where a user has not been previously registered, and thus does not have an ID or password, the Authentication Application 245 will query the user for registration information. The registration information can include identification information, such as name, address, E-mail address, and telephone number. The registration information may additionally include payment information, such as a credit card account number, an E-wallet account, or like billing information, which may be debited by the system when the user pays for lead options, which are explained in detail below. The queries presented to the user may be accessed by the authentication application 245 from the profile and specification query database 295, which stores queries or questions requiring a user response.

According to one aspect of the invention, queries relating to payment or account information may be presented to the user at a later time, such as just prior to matches being presented to the user (e.g., the user may be informed that matches exist, but that a payment must be made to view the matches). According to one aspect of the invention, users can pay per match, pay per session, pay for a subscription, or pay an amount that is equal to a percentage of the transaction amount (e.g., 1% of the total transaction). The registration can also include a step whereby a user who has provided any required identification and payment information can select an ID and password that is stored by the LOE 100 for use in identifying the registered user each subsequent time the user accesses the LOE 200. Finally, after a new user provides the necessary registration information, a user profile, which includes the user input registration information, is generated for the user and stored in the user profile database 280.

After completing the Authentication or Registration 305, the user is instructed by the LOA 250 to fill out project profile information 310. It will be appreciated that this instruction may be presented to the user on a different

web page, or on a different screen than the registration information. The user may be forwarded to this screen by clicking on a link, or the user may be automatically forwarded to the screen after the LOE 200 determines that the user has completed the registration process. The Project Profile Information (PPI) collected from users enables the users to specify the type of service or project they would like completed, or would like to complete. Therefore, both service providers (those selling services) and clients (those buying services) are required to submit PPI. For a client, the PPI describes a specific project. For a vendor, this information describes an ideal type of project. The PPI is used by the LOE 200 to determine project matches, as will be explained in detail below.

To collect PPI from the user, the LOA 250 accesses project profile queries stored within the profile and specification query database 295, and presents these queries to the user. It should be appreciated hereinafter that the profile and specification database 295 can store and provide all queries submitted to users by the LOE 200. A user can respond to the queried using either preselected answers from a pulldown menu, multiple choice selection, or the like, or via user input PPI. According to one aspect of the invention, there are three major subject matter areas covered in the PPI queries, each of which contributes to the system's accurate assessment of user projects. These three areas, project parameters, project description, and organization personality, each contain multiple queries requiring user response.

The project parameter queries presented by the LOA 250 attempt to help characterize a particular project based upon a list of objective project attributes. For example, some of the project parameter queries include: the estimated hours to completion, estimated duration (the number of months/weeks to complete the hours), estimated overall cost of the project, highest cost or the project, ideal dollar amount for the project, dates available to the project, project start date, and a project end date. Thus, a client can indicate parameters that must be met by the potential pool of service providers in communication with the LOE 200. For instance, where a client inputs a start date that an otherwise skillful service provider cannot meet, this criteria can prevent the LOA 250 from matching that particular service provider and the client, as described in detail below.

In addition to project parameters, the user must respond to project description queries so that the system of the present invention can accurately determine the type of project a client or service provider wishes to purchase or sell. To accomplish this, the LOE 200 presents the users with questions regarding the type of industry in which the project is best classified, and general and specific skills required for the project. It is preferred that users respond to these questions through the use of pull down menus or lists of pre-determined

keywords. However, users can also utilize user created keywords in order to facilitate project matching. To facilitate project matching and to assure the quality of PPI, the LOA 200 can suggest that the user use less keyword descriptors per profile. A user selecting a high number of keywords, such as more than a set amount specified by the LOA 250, can be asked to consider dividing the current profile into multiple profiles if the profile is in fact a description of several projects, and not one project. To supplement the information gathered from the keyword descriptors, users can enter any additional information, via a text box, relating to the project for inclusion in the PPI.

Finally, in compiling accurate PPI, the user has the option to fill out organization personality information to increase the effectiveness of the matching algorithm of the LOE 200, which is described in detail below. This objective information enables a user to identify those types of entities the user wishes to transact with. For example, a client may wish to work with only businesses having 20 or more years of experience, or a service provider may wish to work with only institutional clients, such as those having 50 or more employees. The organization personality queries, again stored within the profile and specification query database 295 and accessed by the LOA 250, can include questions concerning: Number of employees, Years in business, Processes used to perform project, Preferences of high speed, low cost, and high quality, Financial statements, Certifications, References, Communication medium preference, and Security requirements.

After a client responds to each of the above queries 310, the PPI corresponding to the user will be stored in the project profile database 290. However, it will be appreciated that answers to some queries may or may not be required to fully complete the PPI. For example, a client might enter only and end date for a project, and no start date where the start data is not a mandatory field, the LOE 200 will not request that the user complete this information. On the other hand, some fields, such as type of industry, might require a response from the user, or the LOE 200 will not allow the user to proceed. The project profile database 290 contains fields that store each, answer to the project profile queries generated by the profile and specification query database 295 in the form of attributes. It will be appreciated that the LOE 200 compares these attributes to other users attributes in determining whether a match will be generated. After PPI information has been completed, a user is required to complete lead option information 315, which identifies the preference of a user for obtaining one or more matches.

The submission of lead option information 315 allows a user to identify their preference for a match by placing a value on their desire for a match. According to one aspect of the invention, lead option information includes

lead options, paid for by users, to obtain one or more matches. However, the LOE 200 will not require users to pay for leads. As such, the lead option information will preferably default to a null or zero value, which does not have to be altered by a user in response to a request by the LOE 200 to do so. However, the LOE 200 offers user the opportunity to specify a maximum dollar amount they are willing to pay for a lead. After matches are determined, as will be explained in detail below, the lead option information is utilized by the LOA 250 to determine the leads (matches) that will be presented to the users. More specifically, leads will be awarded to matching PPI in the following manner: first, by the highest dollar amount (i.e., maximum dollar amount for an option) that a user is willing to pay for a lead, and second, by first come first serve (FIFO) order. This results a fair and free marketplace.

The lead option information can also include the number of leads a clients wishes the LOE 200 to generate. This number can be set by the client, or by the LOE 200 based upon the type of project being requested. For instance, someone wishing to have their kitchen remodeled may be limited to 4 leads. On the other hand, an organization looking to build a large building may be limited to 15 leads. A service provider providing remodeling may be limited to 20 leads per week based on its size and ability to adequately provide documented bids to the leads in a reasonable time frame. Furthermore, in addition to the desired number of leads, a user may be asked by the LOE 200 to specify a date to start receiving leads and a date to stop receiving leads. By doing so, the user can set the lifetime of a lead option. Because the LOE 200 awards leads in real time, requiring start and stop dates enables users to create a lead options for later use.

The LOE 200 of the present invention may also request that the user indicate a period of time within which they will contact the lead. This information can also be included in the Lead Option Information. Where a user does not adhere to this timeframe, the LOE 200 can make a negative entry in a quality (or reputation) profile maintained on the user, which can be stored within the user profile database or in a similar database not illustrated in the LOE 200 of FIG. 2. This profile may be used by the LOA 250 in calculating matches. According to another aspect of the present invention, a user has the option to receive daily notification (via E-mail) of their place in line to receive leads. To perform this function, the LOE 200 can perform matching to determine the group of matching users, and list those users via the maximum price and date created. Viewing this report can assist the user in deciding whether to modify the lead option information.

Finally, the lead option information preferably includes information pertaining to user credits. According to one aspect of the present invention, users must set up an account within the LOE 200 by purchasing credits in blocks of a

certain amount, for example $20.00. These credits are then used to pay for leads. The user may not be allowed to reserve lead option without having credits. For instance, if a user's lead option has a max price of $10, and they wish to receive 5 leads, they must have $50 of credits. The LOE 200 enables users to view the balance of their credits, purchase additional credits, and see the total possible amount of credits required for a specific number of leads. Thus, where user inputs a lead value of 5 dollars, and wishes to receive 7 leads, the LOA 250 will inform the user that 35 credits are required to receive these leads.

After the requisite lead option information is completed by the user 315, the information is stored in a lead option profile database 285. Alternatively, this information can be stored within the project profile database 290 or user profile database 280. This information can thereafter be accessed by the LOA 250 as necessary to determine leads offered to users. After the lead option information is completed, the LOA 250 queries the user for information concerning quality specifications 320. According to one aspect of the invention, this information is optional, and the user is not required to respond to these queries. Quality specification information allows a user to sort quality attributes in the order of their importance to the project. For instance, one of the classic choices that must be made when choosing a vendor to complete project work is prioritizing the following factors: high speed, low cost, and high quality. Therefore, the LOA 250 may present these to the user in list form such that the user can rank these quality specifications in order of their importance. Furthermore, the LOA 250 may utilize the user's project profile to specialize the quality specifications presented to the user. For instance, where a construction project is required, a client may be presented with selectable construction standards to indicate quality specifications. When any quality specification data entry 320 is complete, the information is stored within the project profile database 290 such that the specifications may be accessed or searched along with a related project profile, and the user has completed inputting the necessary data into the LOE 200. Therefore, after the quality specification information is completed, the user can request that the LOA 250 locate matches 325, which may be performed by the simple task of clicking on a submit button located on a page dedicated to the quality specification information.

The LOE 200 begins the matching of users by parsing the PPI stored within the project profile database 290 to extract attributes. Attributes obtained from a service provider PPI will be compared to the attributes obtained from client PPI, or vice versa, and a match percentage, as is well known in the art, is calculated based on this comparison. PPI are considered to be matched if their match percentage is equal to the minimum match percentage, which could be set by a user or a LOE 200 administrator to be some arbitrary value, such as

70%. Therefore, it will be appreciated that where the match percentage is set lower than 100%, not every piece of information input by two parties must be identical for the LOE 200 to determine a match has been made. However, where a user identifies that certain project profile information is required or mandatory, such as a client indicating that the client desires only service providers having 10 years of experience, the LOE 200 will not perceive a match, regardless of the match percentage, because the mandatory requirement is not met by the user.

More specifically, the LOA 250 matching process begins by a user being queried for a starting minimum match percentage, a step matching percentage increment, and the number of leads desired. This information may also be set by the LOE administrator, or may be automatically set based upon the type of project, or by another factor, such as the lead option value set by the user. The user will also set the hereafter, the LOA 250 calculates the number of matches based upon the minimum match percentage, as described above. After the number of matches are determined by the LOA 250, the LOA 250 determines if more matches are available than the number desired by the user. If there are fewer leads available than desired by the user, the leads will be distributed to users based upon the highest price a user is willing to pay for a lead, and the order will be established by first in first out (FIFO) and quality specification criteria.

On the other hand, where the number of leads exceeds the desired number of leads, the minimum match percentage is increased by one increment, and the LOA 250 recalculates the number of matches. Thereafter, the LOA 250 again compares the number of leads obtained to the number of leads desired to determine if there are fewer leads returned than requested, and additionally determines whether an performance tolerance level has been reached. The performance tolerance levels can include the minimum desired number of leads, or a price above which a user will obtain leads regardless of the match percentage. Where performance tolerance levels have been met, the minimum match percentage is returned to its previous setting and the leads will be distributed with the highest maximum price, and the order will be established by first in first out (FIFO) and quality. Where performance tolerance limits have not been met, the LOE 200 will determine if there are still more leads than the number of leads desired. If there are, the minimum match percentage will be increased by one increment again and recalculated. This loop will continue until the performance tolerance levels have been reached.

The function of the LOA 250 will best be understood with reference to the following three examples. In a first example, a user's minimum match percentage may be met such that there are a higher number of leads (20) than required by the user (5). As a result, the LOA 250 increases the minimum

match percentage by an increment, such as by 5%. When the minimum match percentage increases by 5%, the number of leads may drop from 20 to 2. However, because the user requested 5 leads, the minimum match percentage will be dropped to 75% so that at least 5 matches will be returned. Thereafter, leads will be distributed based upon the highest maximum price, with the order established by first in first out (FIFO) and quality. Therefore, where 20 other users have submitted higher value lead options on the same matches, the LOA 250 will indicate that no leads have been located. At this time, the user can increment his lead options or wait until another match occurs in which he has a high enough value lead option to be included in a set of leads to a potential match.

According to another example, if there are many service providers with 90% or better matches with maximum lead prices of $45, and there is one service provider with a 70% match that is willing to pay $46, service provider's with 90% matches and better may receive the lead, because the LOA 250 may require a matching tolerance level. For instance, the 70% matching service provider would have to be willing to pay an amount equal to a matching tolerance level set, for instance, $10 more than the $45, to receive a lead. It will be appreciated that the LOA's matching criteria can therefore balance a service provider's need to obtain a lead with the quality of match of the service provider's project profile with that of the client.

According to third example, a first client has a maximum lead option price of $15, a second client has a maximum lead option price of $10, and a third client has a maximum lead option price of $5. Furthermore, each of the clients have requested only one lead, and each have submitted PPI that result in matches with the same service providers. As noted above, the LOA 250 will determine leads based upon the highest maximum price, where the order will be established by first in first out (FIFO) and quality. Therefore, the first lead is awarded to the first client, with the highest lead option value of $15, the second is awarded to the second client, with the second highest lead option value of $10, and the third lead is awarded to the third client, with a lead option value of $5. According to another aspect of the invention, the LOA 250 can determine the lowest amount paid for a lead, and can award subsequent leads to users based upon an increment above that lowest amount, where the users have otherwise have much higher valued lead options. This promotes use of the system, because people will not bid in fear that they are bidding too much, and because people will spend the least amount possible to receive a lead over another user. For instance, in the above example, where the lead increment is $1, set by the user or system administrator, the first client may receive a lead for the lead option price of $7, the second user may receive a lead for the price of $6, and the third, for $5.

Once the number of project matches has been determined, the number of matches and the corresponding percentage match rates are displayed to the user. Based on this report a user may choose to modify or change 330 his/her Project Profile Information 310, Lead Option Information 315, or Quality Specifications 320. If the user wishes to modify this information, the user is returned to the requisite page or location at which this information was previously collected, and the user may change any previous inputs 330. On the other hand, where the user is satisfied with the match percentage report, the user can request that the leads be retrieved 335. If there are leads 340, the LOA 250 will get the leads for the user 345. If there are no leads, the LOA 250 will indicate that no leads have been found.

Where no leads are located, a user has the option of modifying the Lead Option form in order to obtain more leads. A user also has the option of leaving the user and project profile information intact, and requesting that the LOE 200 contact the user at a later time if a lead is located. The LOE 200 can contact the user utilizing the user's contact information as stored within the user profile database 280. The user may be shown his position in the bidding relative to all of the bidders for comparable leads, and may also be provided an estimate of how long it will take to get another lead based on historical data. A user will therefore be best informed as how to increase the maximum cost per lead. If the maximum cost per lead is changed, a new total maximum cost can be calculated by the LOA 250 and displayed. The user may also be presented with input boxes for changing the values of: maximum cost per lead, maximum number of leads, date to start receiving leads, and date to stop receiving leads. If the user changes the data in any of the four fields, he may be required to submit the information, such as via an update button, to see the effect of the change on the estimated time it will take to get another lead. If the user wished to exit the LOE 200, the user's lead option information and the project profile may be stored within the lead option profile database 285 and project profile database 290 for future matching.

When the LOE 200 has identified all of the available leads to a user, the user are asked to negotiate with the client/service provider as soon as possible and keep the LOE 200 informed of the results. If possible, the client and service provider can negotiate online immediately via Chat Room or Video Conferencing or a telephone call. These facilities are made available so that the users can reach agreement quickly, see Facilitating Communication below.

According to one aspect of the invention, the LOE 200 offers supplemental features to facilitate transactions when a user wishes to pursue a transaction with a match made by the LOE. These features include automated E-mail, Quality and Reputation Tracking, Contract Assistance, Money Transferring Assistance, and Escrow capability.

The LOE can automatically E-mail a user when a match is made. In order to appreciate the benefit of this feature, the following example, in which a client has received three leads and has exited the LOE, will be considered. In this example, the LOE may immediately send the client an E-mail that confirms the three leads they received, and the three service providers (leads) will also be sent immediate E-mails informing them that their contact information was provided to a client and that they should hear from the client shortly. At the same time, E-mails can be scheduled for a set time period, such as two days, after execution of the leads. These E-mails are sent to both the client and the service providers asking questions about the responsiveness and good faith of all of the parties involved. All of the recipients are also asked whether they have concluded negotiations and reached agreement with the lead/s because of using the LOE.

If no agreement has been reached, they will receive another E-mail asking whether the negotiations failed and will not succeed. If they failed, the record is closed. If they are still negotiating, another E-mail is scheduled for five days (a parameter that can be set by the user or LOE administrator) later which asks for a status from all of the parties. Answers to the status E-mail will be processed and stored but no further action will be taken. If any of the leads resulted in successful negotiations between a client and a service provider, the client and service provider will be sent E-mails asking a set of quality related questions. Their answers will be processed and stored for use in the quality and reputation tracking process.

The client might not close a deal with all of the leads. Service providers that are not included in a deal using the LOE contract assistance option are still valuable prospective leads for other clients. The LOE will analyze the results to determine if they should receive a "Sorry" E-mail and quality related questions about the process. If the user only wishes to conduct business with one lead, the "Sorry" E-mails will be sent. But sometimes the user may wish to conduct business with more than one lead. Checks will be made to determine if they have already been sent a set of questions about the process. If the first set of scheduled Emails have not been sent they will be deleted. Any service provider that is still on the "active list" will be sent an Email asking their opinions about the quality of the process and the client.

Quality/Reputation Tracking is another supplemental feature that may be offered by the systems, methods and computer program products of the present invention. Quality measurement and tracking is achieved through asking respondents a set of questions about a performer. This is accomplished using the Automated Email process described above. The questions may be about responsiveness, good faith negotiation and other attributes that affect the

quality and value of the leads produced by the Lead Option Engine. Several factors can be considered when a score is produced, such as the Respondent, The Performer, The Quality Type, The Questions Asked, The Answers Received, The Raw Score, The Weighting Factor, as well as other data, such as adherence to the terms and conditions of the LOE. The resulting quality can be included in clients and service providers profiles that will be available to future users wishing to conduct business with the clients and service providers. Should a user be given poor quality scores by users of good reputations, the customer service department, may at its discretion contact the user and suspend their use of the LOE system for a defined period of time.

According to yet another aspect of the invention, the LOE can facilitate communications among multiple users where the users are currently accessible online. For instance, after viewing lead contact information, the LOE can establish if any of the user's leads are currently online, and ask the user if they would like to communicate with any of the leads currently online. Three methods of instant communication, private chat rooms, videoconference, and telephone calls, are supported by the LOE. The LOE provides private chat rooms for its users to meet one another to discuss relevant items pertaining to the current project and to negotiate an agreement (contract). The LOE can assure the security of these chat rooms. When a user requests a private chat room they will become the administrator of that room and will have the ability to grant or deny access to other LOE users. This service will use standard Chat Room software that is in use on the Internet. It will be made available through the LOE web servers. An alternative to the chat room is the videoconference. The LOE will provide users with back end capability to meet in cyberspace using videoconference technology. This option is available to users who have the required hardware and software. This service will use standard videoconference software that is in use on the Internet.

Yet another supplemental feature of the LOE is the ability to provide contract assistance to clients and service providers by providing online collections of industry specific contract samples that users can copy to facilitate making their deals. Secure storage capability for the final contracts that the clients and service providers have finalized. Secure retrieval capability of the contracts that have been stored in case of a dispute later.

Additionally, the LOE provides a facility online for the transfer of funds between the client, the service provider and the LOE. This optional service will include transfer of finds via several methods including: Credit Cards, Debit Cards, Checks, Check by Phone, Wire Transfers, Internet money. Money will be able to be transferred once or according to a schedule. Furthermore, clients and service providers may wish to have a third party company hold money in escrow during the length of their contract. Clients

and service providers will be able to contact various third parties immediately on-line, or via other communications means.

According to one alternative embodiment of the present invention, the systems, methods and computer program products disclosed herein can be implemented as a brokering engine deployed for use by a multitude of LOE marketplaces, such as those on the world wide web. Because many sites use and implement marketplaces, a marketplace would be helpful where overflow and market-to-market transactions can occur. The LOE of the present invention can supply the solution. For instance, if a construction LOE marketplace has too many clients seeking to have a service provider redo their kitchens, and there aren't enough service providers in the marketplace to take the work, the marketplace can utilize a global LOE to transact with other LOE marketplaces, thereby finding service providers to take up overflow work. This would likewise work where there is an overabundance of service providers rather than clients. This global LOE is advantageous because marketplaces normally competing for the business of their users, and thus, don't typically create systems to communicate. The LOE of the present invention may enable instant communications among the various marketplaces to ensure as many transactions are processed as possible. This global marketplace, or members only marketplace, will therefore allow client marketplaces to search other client marketplaces for qualified transactions for their users. Transaction fees, and other associated monetary transactions can automatically be managed by the members only marketplace according to a set of parameters. For example, according to one aspect of the invention, commissions and transaction fees can be automatically split among various marketplaces.

Thus, the systems, methods and computer program products of the present invention offer a number of advantages. For instance, because the LOE provides leads on only those service providers and customers who are prepared to transact, and who meet each other's criteria (e.g., project completion date), a service deal using the present invention can be closed in a matter of minutes. Furthermore, the present invention offers a fair marketplace by allowing any entity to compete for service providers or clients. Accordingly, the LOE provides a marketplace that creates a long term solution where participants can quickly and comfortably transact business and return for repeat use. This is clearly differentiated from other matching engines, which may result in thousands of matches, and do not offer checks on availability or qualifications. An LOE according to the present invention also provides for quality, speed and cost preferences, as well as organizational requirements. Therefore, the LOE provides only matches that are desired, and none that are not desired based on the project profile and organization profile. Finally, the present invention provides natural incentives for service providers

to respond quickly to potential clients because money is invested in each lead, others may have potentially received the same lead, and the service providers may be evaluated.

Many modifications and other embodiments of the invention will come to mind to one skilled in the art to which this invention pertains having the benefit of the teachings presented in the foregoing descriptions and the associated drawings. Therefore, it is to be understood that the invention is not to be limited to the specific embodiments disclosed and that modifications and other embodiments are intended to be included within the scope of the appended claims. Although specific terms are employed herein, they are used in a generic and descriptive sense only and not for purposes of limitation.

* * * * *

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EXHIBIT "R" PATENT EXAMINER MEETING

The documents in Exhibit "R" confirms that Roger Marx Desenberg only was able to get an allowance when he met with the patent examiner without an attorney.

Interview Summary

Application No.	Applicant(s)	
09/621,663	DESENBERG, ROGER MARX	
Examiner	Art Unit	
Alain L. Bashore	1762	

All participants (applicant, applicant's representative, PTO personnel):

(1) *Alain L. Bashore*. (3) *Tim Meeks*.

(2) *Mr. Roger Desenberg*. (4)____

Date of Interview: *15 February 2006*.

Type: a)☐ Telephonic b)☐ Video Conference
c)☒ Personal [copy given to: 1)☒ applicant 2)☐ applicant's representative]

Exhibit shown or demonstration conducted: d)☐ Yes e)☒ No.
If Yes, brief description: ____

Claim(s) discussed: *amended claim 24 (attached)*.

Identification of prior art discussed: *N/A*.

Agreement with respect to the claims f)☒ was reached. g)☐ was not reached. h)☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: *applicant agreed to the attached amendment for allowance of this case, pending second-pair-of-eye review. Applicant was advised that there is a delay before the notice of allowance is mailed to the applicant reading business method cases. Regarding change of address, applicant's FL address will be used.*

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

ALAIN L. BASHORE
PRIMARY EXAMINER

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

EXHIBIT "S" PRIOR-ART SEARHES

The documents in Exhibit "S" confirms that Roger Marx Desenberg performed prior art searches.

USPTO Patent Full-Text and Image Database

Searching US Patent Collection...

Results of Search in US Patent Collection db for:
((ACLM/maximum AND ACLM/price) AND ACLM/lead): 6 patents.
*Hits **1** through **6** out of **6***

Jump To

Refine Search

aclm/maximum and aclm/price and aclm/lead

	PAT. NO.	Title
1	7,246,080 T	Apparatus, system and method for measuring and monitoring supply chain risk
2	7,165,048 T	Differential commission and electronic order matching process for the distribution of primary market fixed income securities
3	7,139,732 T	Systems, methods, and computer program products facilitating real-time transactions through the purchase of lead options
4	7,035,815 T	Method and apparatus for computer system online lead time advisor
5	5,630,070 T	Optimization of manufacturing resource planning
6	5,548,200 T	Universal charging station and method for charging electric vehicle batteries

Admin Login Desenberg.com RogerMarxDray
d | US Patent Full-Text Database... | Patent Full-Text Tips on Field... | Help on the Advanced Search... | Patent

USPTO Patent Full-Text and Image Database

Data current through November 18, 2008.

clm/price and aclm/ad

Examples:
ttl/(tennis and (racquet or racket))
isd/1/8/2002 and motorcycle
in/newmar-julie

Search | Reset

m 1790 through 1975 are searchable only by Issue Date, Patent Number, and Current US Classi
ecific numbers in the Patent Number field, patent numbers must be seven characters in length,
which are optional.

Field Code	Field Name	Field Code	Field Name
PN	Patent Number	IN	Inventor Name
ISD	Issue Date	IC	Inventor City
TTL	Title	IS	Inventor State

USPTO PATENT FULL-TEXT AND IMAGE DATABASE

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Images

United States Patent **7,349,876**
Veach **March 25, 2008**

Determining a minimum price

Abstract

Different minimum prices are assigned to different ad serving constraints (such as keywords, geolocations, serving times, etc.). A single auction minimum price may be determined for an auction using the minimum prices assigned to satisfied serving constraints of ads participating in the auction.

Inventors: **Veach; Eric** (Mountain View, CA)
Assignee: **Google, Inc.** (Mountain View, CA)
Appl. No.: **10/350,898**
Filed: **January 24, 2003**

Current U.S. Class: **705/35**
Current International Class: G06Q 40/00 (20060101)
Field of Search: 705/35-45

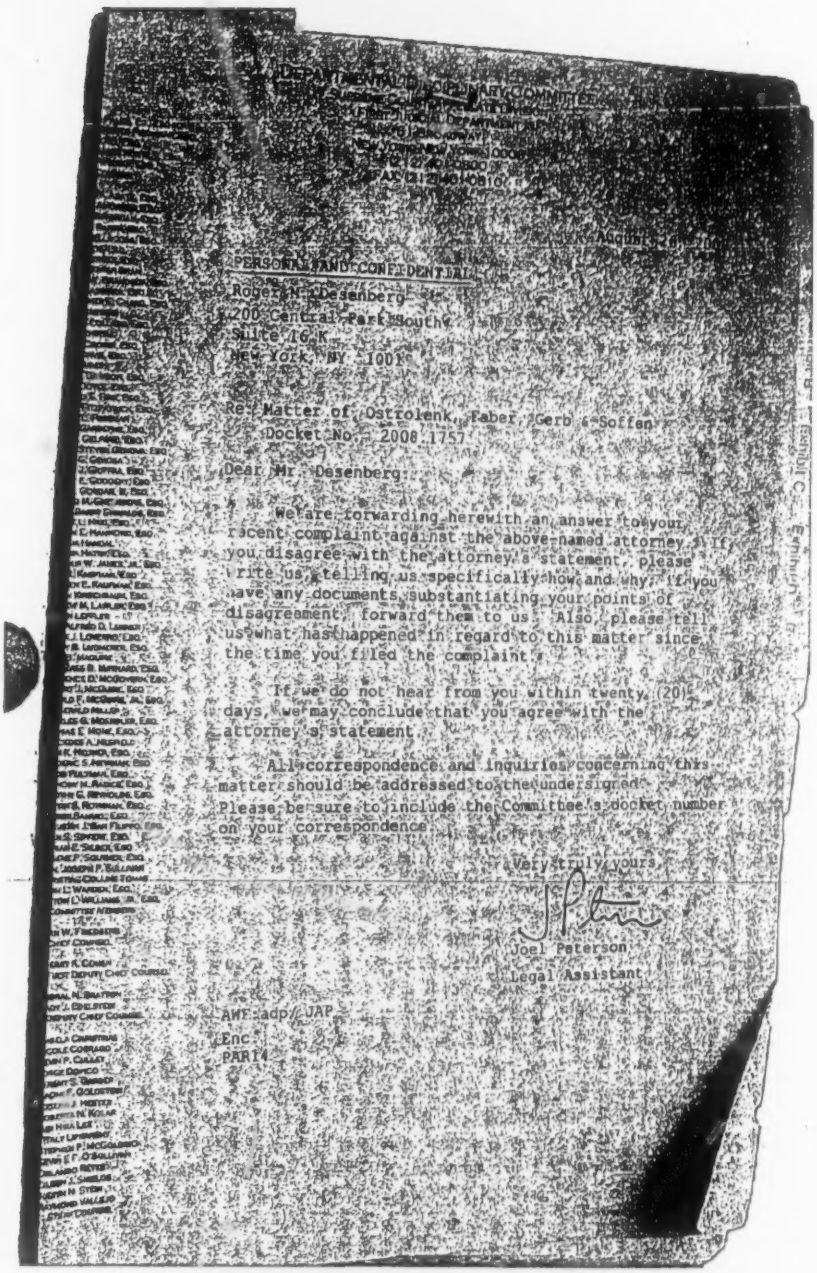
References Cited [Referenced By]

U.S. Patent Documents

6704716 March 2004 Force

EXHIBIT "T" COMPLAINT FILED AGAINST PATENT ATTORNEY

The document in Exhibit "T" confirms that the Inventor, Roger Desenberg, believes that a patent attorney he hired was in fact fraudulent. The enclosed document is a reply to the Inventor's complaint against one attorney, and was filed recently with the Departmental Disciplinary Committee, Supreme Court, Appellate Division in New York.



PERSONAL AND CONFIDENTIAL

Roger N. Desenberg
200 Central Park South
Suite 16-K
New York, NY 10019

Re: Matter of: Ostrolenk, Faber, Gerb & Soffen
Docket No.: 2008.1757

Dear Mr. Desenberg:

We are forwarding herewith an answer to your recent complaint against the above-named attorney. If you disagree with the attorney's statement, please write us, telling us specifically how and why. If you have any documents substantiating your points of disagreement, forward them to us. Also, please tell us what has happened in regard to this matter since the time you filed the complaint.

If we do not hear from you within twenty (20) days, we may conclude that you agree with the attorney's statement.

All correspondence and inquiries concerning this matter should be addressed to the undersigned. Please be sure to include the Committee's docket number on your correspondence.

Very truly yours,

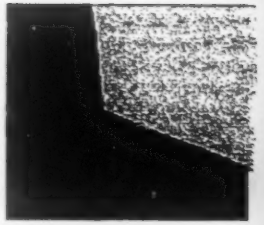
Joel Peterson
Legal Assistant

AWF:adp/JAP
Enc.
PART4

EXHIBIT "U" 99% REVENUE FROM ADVERTISING

The document in Exhibit "U" confirms that Google generates 99% of their revenue from their advertising systems, which use the Maximum Price system.

vertising



Google appliance as shown at RSA Conference 2(

% of Google's revenue is derived from its advertising programs[48]. For the 6 fiscal year, the company reported US$10.492 billion in total advertising enues and only US$112 million in licensing and other revenues.[49] Google ole to precisely track users' interests across affiliated sites using ubleClick technology[50] and Google Analytics.[51] Google's advertisements y a lower price tag when their human ad-rating team working around the ld believes the ads improve the company's user experience.[52] Google AdWords allows W ertisers to display advertisements in Google's search results and the Google Content Netw ugh either a cost-per-click or cost-per-view scheme.[*citation needed*] Google AdSense websit ers can also display adverts on their own site, and earn money every time ads are ked.[*citation needed*]

ogle has also been criticized by advertisers regarding its inability to combat click fraud, whe son or automated script is used to generate a charge on an advertisement without really ha nterest in the product. Industry reports in 2006 claim that approximately 14 to 20 percent of ks were in fact fraudulent or invalid.[53]

Exhibit A - 2

Preliminary Injunction Motion

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ROGER MARX DESENBERG, Plaintiff,	)	
v.	)	CIVIL ACTION: 08 CIV 10121
GOOGLE, INC., Defendant.	)	

February 3, 2009

PLAINTIFF'S NOTICE OF MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Roger Marx Desenberg ("Plaintiff or Inventor"), respectfully moves this court to order Defendant to show cause why they should not be enjoined from

originating transactions that receive payments for the display of contact information;

wherein a maximum price or maximum cost is used or recorded with such originating transaction; and

wherein such transaction occurred on the Internet or a network

until a final deposition on the merits in the above entitled action;

WHEREIN the Plaintiff/Inventor has established a right to a preliminary injunction in light of the four separate factors considered to order a preliminary injunction for patent infringement:

(1) a reasonable likelihood of success on the merits, See Exhibit "A".

(2) irreparable harm, See Exhibit "B"

(3) the balance of hardships is tipping in favor of the requesting party, the Plaintiff, see Exhibit "C",

(4) that the issuance of such preliminary injunction is in the public interest. See Exhibit "D".

Unless this order is issued, Plaintiff will suffer immediate and irreparable injury, loss and damage in that being unable to generally to exploit the commercial benefit of monopoly power; and

(i) the harm of the lost benefits that would be derived from having exclusive use of the patented invention;

(ii) harm with being denied the ability to set prices; and

(iii) harm of being unable to establish profitable relationships and being unable to generally to exploit the commercial benefit of monopoly power including the harm from

the Plaintiff's inability to set standard architectures that will remove excessive fraud, and thereby create a marketplace of trust and goodwill that will prevent the failure of the Maximum Price lead generation industry;

wherein according to some economists, such failure is eminent if the excessive fraud is not removed from the Maximum Price lead generation industry. See Exhibit "E", The Economist.

(v) harm from the inability to establish relationships to create wholesale marketplaces for the leads generated by Patent 732 Technology; and

(vi) other harm to Plaintiff's other commercial interests including businesses related to the patented invention, businesses related to the Internet, and non-Internet related businesses. See Exhibit "Irreparable Harm"

As evidenced by the Defendant's past unwillingness to act appropriately for more than two years after receiving notice of infringement on November 22, 2006, the Defendant is clearly unwilling to stop infringement even after two years of receiving notice, and wherein Defendant confirmed they received notice;

thus it is apparent the Defendant will continue to willfully and knowingly infringe and implement an architecture that allow excessive fraud of 15% that is over $1 billion per year which is currently jeopardizing the entire business, unless such order for Preliminary Injunction is ordered; and

no prior request has been made for the relief requested herein by this Motion of Preliminary Injunction.

As can be seen from the foregoing, Plaintiff has no adequate remedy at law.

The following documents and Exhibits are included herein:

Motion for Preliminary Injunction (this document)

Affidavit of Roger Marx Desenberg

Four Factors Exhibits

Plaintiff's Preliminary Injunction Plan

Background Information

Daily Project Plan

Order to Enjoin Defendant

WHEREFORE, Plaintiff respectfully requests that the court grant the within relief as well as such other and further relief that may be just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Dated:

Signature:

or

Sworn to before me this _____ day of _____ 20____

_____

Notary Public

I, Roger Desenberg, affirm, that a copy of this motion was mailed on February 5, 2009 to the Defendant's Patent Counsel:

Quinn Emanuel, Edward J. DeFranco

51 Madison Avenue 22nd Floor

New York, New York 10010

_____ _____

Roger Marx Desenberg Date

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ROGER MARX DESENBERG, Plaintiff,	)	
v.	)	AFFADAVIT CIVIL ACTION: 08 CIV 10121
GOOGLE, INC., Defendant.	)	

February 3, 2009

AFFADAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Roger Marx Desenberg, being duly sworn, deposes and makes the following affadavit under the penalties of perjury:

1. Roger Marx Desenberg, as plaintiff in the above entitled action, respectfully move this court to order Defendant to show cause why they should not be enjoined from

originating transactions that receive payments for the display of contact information;

wherein a maximum price or maximum cost is used or recorded with such originating transaction; and

wherein such transaction occured on the Internet or a network

according to the Preliminary Injunction Plan in Exhibit "B" until a final deposition on the merits in the above entitled action;

WHEREIN the Plaintiff/patentee has established a right to a preliminary injunction in light of the four separate factors considered to order a preliminary injunction for patent infringement:

(1) a reasonable likelihood of success on the merits, See Exhibit "A"; and

(2) irreparable harm, See Exhibit "B"

(3) the balance of hardships is tipping in favor of the requesting party, the Plaintiff, see Exhibit "C"; and

(4) that the issuance of such preliminary injunction severs the public interest. see Exhibit "D".

Unless this order is issued, I will suffer immediate and irreparable injury, loss and damage in that I will suffer

(i) the harm of the lost benefits that would be derived from having exclusive use of the patented invention;

(ii) harm with being denied the ability to set prices; and

(iii) harm of being unable to establish profitable relationships and being unable to

generally to exploit the commercial benefit of monopoly power including the harm from the Plaintiff's inability to set standard architectures that will remove excessive fraud, and thereby create a marketplace of trust and goodwill that will prevent the failure of the Maximum Price lead generation industry;

wherein according to some economists, such failure is eminment if the excessive fraud is not removed from the Maximum Price lead generation industry. See Exhibit "E".

(v) harm from the inability to establish relationships to create wholesale marketplaces for the leads generated by Patent 732 Technology; and

(vi) other harm to Plaintiff's other commercial interests including businesses related to the patented invention, businesses related to the Internet, and non-Internet related businesses. See Exhibit "B"

As evidendced by the Defendant's past unwillingness to act appropriately for more than two years after receiving notice of infringement on November 22, 2006, the Defendent is clearly unwilling to stop infringement even after two years of receiving notice, and wherein Defendant confirmed they received notice;

thus it is apparant the Defedant will continue to willfully and knowingly infringe and implement an architecture that allow excessive fraud of 15% that is over $1 billion per year which is currently jeopordizing the entire business, unless such order for Preliminary Injunction is ordered; and

no prior request has been made for the relief requested herein by this Motion of Preliminary Injunction. As can be seen from the foregoing, I have no adequate remedy at law.

WHEREFORE, I respectfully request that the court grant the within relief as well as such other and further relief that may be just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Signature:_____ Date: _____

I, Roger Desenberg, affirm, that a copy of this motion was mailed on February 5, 2009 to the Defendant's Patent Counsel: Quinn Emanuel, Edward J. DeFranco, 51 Madison Avenue 22nd Floor, New York, New York 10010

_____ _____

Roger Marx Desenberg Date

EXHIBIT "A"
LIKELIHOOD OF SUCCESS ON THE MERITS

The Plaintiff has a reasonable likelihood of success on the merits:

A) Validity

B) Enforceability

C) Infringement

VALIDITY

Is Patent 7,139,732 a valid patent?

Yes, it's a real invention, so real and amazing, this real time pricing lead generation system is responsible for generating leads that result in an estimated $200 billion to $500 billion of business transacted on about $10 billion of leads, annually.

No prior art exists according to USPTO, and "near" inventions that do not include the following components: Maximum price/cost, lead limit, over a network like the Internet, to generate leads to transact services, that creates lead prices that are between zero and the maximum are not prior art.

With regard to prior art, unless an invention is not exactly the Maximum Price system as described in Claim 1 of Patent 732, it is not prior art. Making required subtle changes to software input screens that change the core of the software system is not an example of obviousness.

1) Because of the inherent subtlety of software where it is shown in Exhibit "E" that changing, or adding, or removing the label of one data field can dramatically alter the effect and process of an entire software system, and therefore explaining such subtlety of software can be a very lengthy process that should be appropriately discussed during the litigation period, but not discussed during the preliminary injunction decision; and

2) During 1999 several companies received investment to find a solution to this problem of transacting services and generating leads, including eLance.com and ServiceMagic.com and the Plaintiff's Projectwork.com. During 1999, only one person, the Plaintiff/Inventor, invented a system to meet the rigourous demands of

generating leads using a method that creates a comfortable real time market pricing mechanism: the Maximum Price system.

Validity proof and evidence can be found in Exhibits "A".

ENFORCEABILITY

Claims define the invention and are what aspects are legally enforceable. As the definition of "enforceability" can be interpreted differently, the Plaintiff has shown that Patent 732 is enforceable with regard to the following definitions:

Definition 1: Enforceability of Patent

The right of the patent owner to bring an infringement suit against a party who, without permission, makes, uses or sells the claimed invention. The period of enforceability of a patent is the length of the term of the patent plus the six years under the statute of limitations for bringing an infringement action.

Source: U.S. Patent and Trademark Office.

Patent 732 is enforceable according to definition 1.

Definition 2:

ENFORCEABLE - A right or obligation is enforceable if the party obligated can be forced or ordered to comply through a legal process.

Patent 732 is enforceable according to definition 2 because infringement and validity is proven.

Definition 3:

to carry out effectively "enforce laws or enforce patent laws"

Patent 732 is enforceable according to definition 3 and public interest is being served through the enforcement of Patent 732.

In all three of these respects, the patent is enforceable. And further the patent is enforceable in a

commercial context:

(i) can infringers be readily identified? Yes.

(ii) can patent law be leveraged for public good as intended? Yes.

(iii) Can patent law be enforced for the public good of the Inventor? Yes.

Can patent infringers be identified?

For examples, suppose an aluminum inventor process plant patented a method to make the same aluminum cans made by everyone else, but it does with substantially less energy. Under such a scenario, it may be hard to ever know if someone was infringing, and to prove infringement may be difficult. No one could tell from the can that someone was infringing, because the cans looks exactly the same. Enforceability in this example could be weak.

But in this case, or virtually any Internet case, its very simple to see what process a vendor or a customer is using. Because anyone around planet earth who has a computer an Internet connection, can quickly test many Internet inventions as a vendor or a customer, and infringement is evident in only a few minutes.

Hence in this case, ascertaining infringement is straightforward and simple. Simply logon to the Defendant's AdWords system as a vendor, and verify the Maximum Price / Cost. The beauty of the patented invention, the Maximum Price lead generation engine, is that if monopoly powers are leveraged correctly by the Plaintiff/Inventor, the Plaintiff/Inventor has the opportunity to create a desperately needed Internet lead generation system devoid of excessive fraud, especially during this time of financial crisis because enforceability is so straightforward due to the inherent nature of the Internet. Hence Enforceability is simple and straightforward and enforcement of Patent 732 will beget benefits to public interest in reducing fraud, and enabling the Plaintiff/Inventor to reap some of the benefits of Patent 732 after such requested preliminary injunction contained herein is so ordered.

INFRINGEMENT

The test of infringement is whether the device in question does substantially the same work in substantially the same way and accomplishes the same result as the device that has been patented.

There is, according to one court, "no one more qualified than the inventor to express an opinion as to what constitutes theft of inventiveness."

It has been recognized that an inventor "should be qualified to express any necessary opinion as to what constitutes infringement of his patent."

"Google's AdWords systems literally infringes on my patent 7,139,732" is a statement by Plaintiff/ Inventor Roger Marx Desenberg, Inventor of the Maximum Price system.

Considering that to establish a reasonable likelihood of success on the issue of patent infringement, a patentee must demonstrate a reasonable likelihood that at the trial on the merits he can prove by a preponderance of the evidence that the defendant infringes one or more claims of the patent, and thus a patentee may establish likelihood of success by showing either

(i) literal infringement or

(ii) infringement under the doctrine of equivalents; and

since

(i) software is very adaptable and can change without notice, and

(ii) the version of Defendant's AdWords the Inventor has inspected literally infringes on Patent 732, and

(iii) the Defendant has various types of partners and associates and representatives, and

(iv) the Defendant may be developing new applications, and

(v) the Plaintiff has proven by a preponderance of evidence that the defendant's AdWords infringes on Claim 1 of Patent 732;

the Plaintiff has proven that AdWords literally infringes by a preponderance of evidence; and

the Plaintiff can prove and show that new advertising or lead generating systems created by the Defendant that uses a Maximum Price infringes at least under the doctrine of equivalents and may literally infringe like AdWords by comparing the evidence enclosed herein to such new system.

See Infringement proof and evidence in Exhibits "A" and "E".

LAYMEN'S 5 MINUTE PROOF
TO IDENTIFY INFRINGERS OF PATENT 7,139,732
USING THE FOUR QUESTIONS

In ascertaining if a system or method infringes on Patent 732, a quick 5 minutes analysis can be completed showing the likelihood of success based on literal infringement or based on infringement of the doctrine of equivalents, by answering four simple questions.

If the answers to all of the following four questions is "YES", the system or method most likely infringes on Patent 732:

1) Is there a **Maximum Price** involved?

2) Are customers **paying for contact information** to be displayed or delivered?

3) Do some customers access the system or method via the **Internet**?

4) Are **services** identified by some customers?

After reviewing the Defendant's AdWords technology, the answers to all of the four questions above is yes, thus there is a likelihood of success on the merits of literal infringement and infringement of the doctrine of equivalents.

Generally if a system or method:

(i) uses a Maximum Price or Cost

(ii) enables paying for contact information

(iii) accessible via the Internet

(iv) identifies services

the such system or method infringes on US Patent 7,139,732.

The Defendant's AdWords;

(i) uses a Maximum cost-per-click

(ii) enables paying for contact information when displayed in a "sponsored links" section;

(iii) is accessible via the Internet;

(iv) and services, such as shipping, legal, health, construction and other services can be found

Thus the Defendant's AdWords clearly infringes based on the 5 minute four question test.

LAYMEN'S 60 MINUTE DETAILED PROOF THAT DEFENDANT'S ADWORDS SYSTEMS INFRINGES ON PATENT 7,139,732

IMPORTANT: According to patent examiner - if it is proven that in at least one scenario the potential infringer infringes periodically, then the infringer shall be legally found to infringe.

Hence, two scenarios are analyzed below.

the first scenario (1) is where a searcher enters in keywords into Defendant's search engine system, but does not actually enter into a financial transaction found by using the Defendant's Adwords or "sponsored links".

the other scenario (2) is where the searcher actually conducts a financial transaction for services found using the Defendant's AdWords systems, which is the scenario wherein the Defendent clearly infringes.

It does not have to be proven that the Defendant infringes on EVERY transaction or EVERY scenario. One infringing scenario is enough to prove infringement. The infringing scenario is where a user is looking for a plumber in New York, that is found, hired, and services are paid for between the customer of the AdWords system and a customer. The scenarios like the plumber, which infringe on claim 1, are in fact the scenarios where people are paying millions of dollars for the leads.

Claim 1 has been seperated into 15 phrases for analysis.

Phrases 1-15 of Claim 1 of Patent 732 *(US Patent No. 7,139,732)*	(1) Does Google's AdWords Infringe when Ads Pop up on the right side?	(2) Does AdWords Infringe with the Plumber Scenario when someone actually buys the service?	
A method for a user using a communication network	ALWAYS	ALWAYS	The Defendant's AdWords does run on the Internet or similar network. Therefore Defendant is clearly infringing on this Phrase 1 of Claim 1.
search for and identify at least one matching provider of project work	SOMETIMES	ALWAYS	Everytime someone on the Defendant's systems enters in keyword like "plumber" or "attorney" this phrase is being infringed upon. Therefore Defendant is clearly infringing on this Phrase 2 of Claim 1
transmission of a lead comprising contact information that enables communication between the user and the provider	ALWAYS	ALWAYS	Everytime an AdWords ("sponsored links") ad pops up on the right side, lead contact information has been communicated. Therefore Defendant is clearly infringing on this Phrase 3 of Claim 1
transaction lead price is the amount of money paid for the lead	SOMETIMES	ALWAYS	Everytime a customer of the Defendant pays money for the leads generated. Defendant infringers. Therefore Defendant is clearly infringing on this Phrase 4 of Claim 1

wherein a service is performed by the user or the provider as a result of the transmission of the lead; wherein the performance of the service includes a service transaction fee paid by the user or the provider	SOMETIMES	ALWAYS	This was the section where the patent examiner said the patent has "teeth", because the patented invention includes a real business transaction wherein a service was transacted for a fee. So everytime a service is found and paid for like when a package is shipped that originated as a lead found on Defendant's AdWords systems, the Defendant infringes. The patent examiner explained to the Inventor that it is very straightforward to show that at least one service vendor has sold at least one service due to the leads generated by the AdWords systems. Therefore Defendant is clearly infringing on this Phrase 5 of Claim 1
storing in a database	ALWAYS	ALWAYS	databases can be defined to almost any set of electronic data. Therefore Defendant is clearly infringing on this Phrase 6 of Claim 1
at least first provider information and second provider information, the at least first provider information and the at least second provider representing at least respective maximum lead prices, each of the respective maximum lead prices representing the maximum amount that each of at least a first provider and a second provider is willing to pay for an lead.	ALWAYS	ALWAYS	The Defendant's AdWords systems agreements and payment systems does have a "Maximum cost per click" field,which is on the Defendant's computer systems as evidenced in Exhibit "A". THEREFORE Defendant cleary infringes on this Phrase 7 of Claim 1.
wherein each of the at least first and second providers provide at least one service with which the lead is associated;	ALWAYS	ALWAYS	Since the Defendant has more than one AdWords customer that provides services; Therefore Defendant is clearly infringing on this Phrase 8 of Claim 1
comparing the respective maximum lead prices to determine a lowest respective maximum lead price;	ALWAYS	ALWAYS	Mathamatically this means if there is sorting by Maximum Price, and the Defendant's sytems clearly sorts by Maximum Price, see Exhibit "A" THEREFORE Defendant cleary infringes on this Phrase 9 of Claim 1.
identifying the provider associated with the lowest one of the respective maximum lead prices;	ALWAYS	ALWAYS	The Defendant links the Maximum costs-per-click to a Campaign ID that belongs to a customer. THEREFORE Defendant cleary infringes on this Phrase 10 of Claim 1.

receiving at least one lead limit that represents a maximum quantity of leads to be provided;	SOMETIMES	ALWAYS	AdWords always limit the number of leads per page, or else they would list thousands and millions of vendors. So the lead limit is the number of leads (or "sponsored links") that appears on one page. To obtain more leads there is sometimes an option for more leads on the next page. The Defendant's THEREFORE Defendant cleary infringes on this Phrase 11 of Claim 1
receiving from a user or provider a request for contact information, the contact information enabling communication between the user and at least one of the first provider and the second provider;	ALWAYS	ALWAYS	If a user is searching for a plumber and enters in "plumber" the uers is undoubtedly asking for contact information to contact the plumber at least in some or most of the time. THEREFORE Defendant cleary infringes on this Phrase 12 of Claim 1
selecting at least one provider based on each respective provider's maximum lead price and the lead limit;	SOMETIMES	ALWAYS	Defendant's AdWords utilizes the maximum cost-per-click and the lead limit during the process of selecting which customer's contact information is displayed according to Defendant's Adwords documentation. THEREFORE Defendant cleary infringes on this Phrase 13 of Claim 1.
calculating a respective transaction lead price for each of the at least one selected provider.	ALWAYS	ALWAYS	The Defendant's AdWords systems generates invoices to its registered users for the leads generated. THEREFORE Defendant cleary infringes on this Phrase 14 of Claim 1.
the respective transaction lead price equals at most each respective selected provider's maximum lead price;	ALWAYS	ALWAYS	Defendents AdWords documentation specifically states that the amount paid per lead (Defendant uses the word "ad" in place of lead) is never more than the Maximum cost-per-click. THEREFORE Defendant cleary infringes on this Phrase 14 of Claim 1
and providing the at least one lead to the user or provider for project work.	SOMETIMES	ALWAYS	Providing a lead, which is the transfer of contact information, always occurs when an AdWords displays "sponsored links" on the right side of the Defendant's search engine pages. "Project work" and "service" are both used throughout the claim to describe a service or an amount of work. THEREFORE Defendant cleary infringes on this Phrase 15 of Claim 1.

copy of EXHIBIT "I"MINIMUM DOCUMENTATION NEEEDED TO IDENTIFY INFRINGEMENT

The documents in Exhibit "I" is the minimum set of information required to quickly identify Google's infringement of US Patent No. 7,139,732:

1. Claim 1 of Patent 7,139,732
2. Input and Output Screens of Inventor's Original Invention
3. Input and Output Screens of Google's AdWords
4. Inventor's Explanation of Maximum Price system
5. Google's Explanation of Maximum Price system

Claim 1 of Patent 7,139,732:

1. A method for a user using a communication network to search for and identify at least one matching provider of project work, the method comprising;

transmission of a lead comprising contact information that enables communication between the user and the provider,

wherein the transaction lead price is the amount of money paid for the lead, and further

wherein a service is performed by the user or the provider as a result of the tranmission of the lead and

wherein the performance of the service includes a service transaction fee paid by the user or the provider;

storing in a database at least first provider information and second provider information,

the at least first provider information and the at least second provider representing at least respective maximum lead prices, each of the respective maximum lead prices representing the maximum amount that each of at least a first provider and a second provider is willing to pay for an lead,

wherein each of the at least first and second providers provide at least one service with which the lead is associated;

comparing the respective maximum lead prices to determine a lowest respective maximum lead price;

identifying the provider associated with the lowest one of the respective maximum lead prices;

receiving at least one lead limit that represents a maximum quantity of leads to be provided;

receiving from a user or provider a request for contact information, the contact information enabling communication between the user and at least one of the first provider and the second provider;

selecting at least one provider based on each respective provider's maximum lead price and the lead limit;

calculating a respective transaction lead price for each of the at least one selected provider, wherein the respective transaction lead price equals at most each respective selected provider's maximum lead price;

and providing the at least one lead to the user or provider for project work.

VALIDITY PROOF OF
DATE OF MAXIMUM PRICE SYSTEM INVENTION
FILED WITH USPTO IN 1999

The enclosed Provisional Patent Application Document was on completed by April 11, 1999 and authored by Plaintiff/Inventor and three pages from that document is enclosed herein and begins on the following page; and the reason such document is included is to prove beyond a doubt the Plaintiff's invention, the Maximum Price system was indeed written specifically about in the Plaintiff's very first patent application filed in 1999 with the USPTO.

At the time when the provisional patent application decoument was written, both the Plaintiff and the Defendant had approximately 8 employees.The following text can be found on the Defendant's website:

> "1999 February: We outgrow our garage office and move to new digs at 165 University Avenue in Palo Alto with just 8 employees."
>
> - http://www.google.com/corporate/history.html

This provisional patent application mentions the word "Maximum" or "Max" 15 times in the document. After the table of contents the the first use of the word "Maximum" in the provisional application document authored by the Plaintiff in 1999 is included below:

> "The Maximum Dollar Amount per Lead .
>
> The LeadOptionEngine does not require users to pay for leads. This field defaults to $0.00. However, users may choose to specify a maximum dollar amount they are willing to pay for a lead. Leads will be awarded to matching project profiles in the following manner: first by the highest dollar amount that a user is willing to pay for a lead and then by first come first served (FIFO). This creates a fair and free marketplace."

Below is from Google's Webite about their history:

2000 April - On April Fool's Day, we announce the MentalPlex: Google's ability to read your mind as you visualize the search results you want. Thus begins our annual foray in the Silicon Valley tradition of April 1 hoaxes.

2000 May - The first 10 language versions of Google.com are released: French, German, Italian, Swedish, Finnish, Spanish, Portuguese, Dutch, Norwegian and Danish. We win our first Webby Awards: Technical Achievement (voted by judges) and Peoples' Voice (voted by users).

2000 June - We forge a partnership with Yahoo! to become their default search provider. We announce the first billion-URL index and therefore Google becomes the world's largest search engine.

2000 September - We start offering search in Chinese, Japanese and Korean, bringing our total number of supported languages to 15.

2000 October - Google AdWords launches with 350 customers. The self-service ad program promises online activation with a credit card, keyword targeting and performance feedback.

Clearly, the Plaintiff invented the Maximum Price system before the Defendant started to use the invention.

EXHIBIT "B"
IRREPARABLE HARM

1. WHEREAS Plaintiff is suffering irreparable harm due to the LOST benefits that would be derived from having exclusive use of the patented invention;

WHEREAS a patent is a right to exclusive use granted by law and that right would give the patent holder not merely the ability to generate cash; it gives the patent holder monopoly power. It may give the patent holder not just the ability to set prices with relative impunity, but to obtain concessions that others cannot, to establish profitable relationships and generally to exploit the commercial benefit of monopoly power; and

WHEREAS the issue is not how many lead generation contracts can be sold by the Plaintiff, but the issue does concern benefit of the patent to the Plaintiff's business that can be derived from having exclusive use of the patented invention; and

WHEREAS INSTEAD OF MONOPOLY CONTROL GOING TO THE RIGHTFUL OWNER WHO WILL IMPLEMENT THE PATENT 732 TECHNOLOGY IN WAYS THAT ARE ECONOMICALLY FAIR WITHOUT EXCESSIVE FRAUD FOR THE PUBLIC INTEREST, THE DEFENDANT, INSTEAD CURRENTLY CONTROLS THE MONOPOLY AND IMPLEMENTS THE INVENTION INCOMPETENTLY WHICH CAUSES FRAUD AND A MARKETPLACE THAT LACKS TRUST AND GOODWILL WHICH DOES NOT PROMOTE ECONOMIC FAIRNESS, THEREBY UNDERMINING THE OPPORTUNITY TO CREATE AN ECONOMICALLY FAIR MARKETPLACE WITH A STRUCTURED WHOLESALE MARKET FOR ALL. Granting a preliminary injunction in this case provides justice for the plaintiff, and justice for public interest.

2. TYPES OF INJURIES IN CASES WHERE PRELIMINARY INJUNCTION HAS BEEN GRANTED

In patent litigation, the courts have granted preliminary injunctions to prevent various types of injuries which the courts deem irreparable, including the following:

(1) Damage to reputation, loss of goodwill, confusion in the marketplace and/or loss of ability to sell non-patented items in the relevant market;

and in this case there is loss of goodwill and confusion in the marketplace. The confusion is widespread and includes (i) incompetent training of users of the patented invention, (ii) lack of understanding of the cause and prevention of the excessive fraud; and (iii) lack of goodwill and trust of users of the patented invention due to the widespread fraud that is preventable. Hence, there is confusion in the marketplace, tremendous damage to Plaintiff's reputation, and tremendous loss of goodwill because of the excessive fraud enabled by the Defendant's incompetent implementation of the Invention;

(3) a deleterious impact on the Plaintiff's market share and pricing structure;

inability to of Plaintiff to set architecture standards that will remove fraud, and open a trusted wholesale marketplace.

(4) the encouragement of others to infringe;

Certainly in this case, as long as the Defendant continues to infringe this will encourage others to infringe; and

(5) an imminent threat to the survival of the Plaintiff's business.

It has been quoted by The Economist that the entire Maximum Price business, or Ad systems like "AdWords" may be in jeopardy because of the excessive fraud. Hence the survival of Plaintiff's business is in jeopardy because the Plaintiff's business is monitoring the use of the invention and guaranteeing an economically fair marketplace without excessive fraud, and with goodwill and trust for users of the Maximum Price system. See copy of economist magazine article on the last page of this Exhibit.

13.) FACTORS THAT FAVOR PRELIMINARY INJUNCTION RELIEF

Some of the factors which have been recognized to favor the imposition of preliminary injunctive relief include the following:

(A) the alleged infringer is reaping the benefit of a substantial investment by the patent holder in product and market development; THIS IS TRUE IN THIS CASE. The Plaintiff has taken investment of over $1.5 million in case and has invested approximately $4 million in resources and time into Patent 732 Technology.

(B) the defendant has a significant presence in the related product market;

TRUE IN THIS CASE

The Defendant has monopoly power in this related product market.

(C) the patented invention is a principal part of the patent holder's business;

THIS IS TRUE, the patented invention is THE SINGLE principal part of the Plaintiff's business.

(D) the patentee is at a significant competitive disadvantage without the patent;

THIS IS TRUE in this case:

Without the patent, the Plaintiff cannot remove the excessive fraud and cannot implement needed new architectures to lower excessive fraud and open wholesale markets.

(E) the field of technology covered by the patent- in-suit is new;

THIS IS TRUE, the Internet technology field is still a new field.

(F) there is a substantial amount of competition in the field;

THIS IS TRUE.

(G) the technology in the relevant industry changes fairly quickly;

THIS IS TRUE.

(H) a considerable amount of research and development is being conducted in the relevant field.

THIS IS TRUE.

Few people understand why the Maximum Price technology works so well, and many economists and software engineers are trying to figure it out and have difficulty without the direction of original inventor.